

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

In the Matter of the Application of	)	PP 16-02/PLN-2016-00631
	)	
<b>Jim Aust</b>	)	<b>Sunrise Ridge</b>
	)	
	)	
For Preliminary Plat	)	FINDINGS, CONCLUSIONS, AND
_____	)	DECISION

**SUMMARY OF DECISION**

The requested preliminary plat to subdivide two parcels totaling 19.8 acres into 44 single-family residential lots is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Jim Aust (Applicant) requested approval of a preliminary plat subdividing two parcels totaling 19.8 acres into 44 single-family residential lots. The subject property is located at 5602 S. Newport Place in Kennewick, Washington.

**Hearing Date**

On June 13, 2016, the City of Kennewick Hearing Examiner conducted an open record public hearing on the request.

**Testimony**

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

- Wes Romine, Kennewick Development Services Manager
- John Deskins, City of Kennewick Transportation Engineer
- John Fetterolf, Applicant Representative
- Spencer Montgomery, JUB Engineering, Applicant Representative
- Ben Woodard, Assistant Engineering Manager, Kennewick Irrigation District
- Floyd Hodges
- Robert Davis
- Jim Aust, Applicant

**Exhibits**

At the open record hearing, the following exhibits were offered in evidence:

1. Staff Report
2. Application
3. Notice of Application/Mailing List

4. Vicinity Map
5. Preliminary Plat Drawing
6. Preliminary Grading Plan
7. SEPA Determination
8. City Department Comments
9. Outside Agency Comments, dated March 21, 2016, and April 21, 2016
10. Neighborhood Comments, dated May 31, 2016
11. Applicant Response to Neighbor Comments, dated June 6, 2016
12. Geologic Hazards Assessment and Critical Areas Report, dated February 25, 2016
13. Trip Generation Letter, dated February 25, 2016
14. Planning Staff's PowerPoint Presentation
15. KSD Comment Letter
16. Revised Plat Map, dated June 13, 2016
17. Memo from Gary Deardorff
18. John Deskins email with attachments
19. Sight distance photos (two)
20. Floyd Hodges comment letter

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following findings and conclusions in support of the decision:

#### **FINDINGS**

1. The Applicant requested approval of a preliminary plat subdividing two parcels of land approximately 19.8 acres into 44 single-family residential lots. The subject property is located at 5602 South Newport Place in Kennewick, Washington. *Exhibits 1 and 2.*
2. The site topography is hilly with some slopes over 15%. The site contains steep slope (over 15% slope) and erosion hazard critical areas regulated by the City's critical areas ordinance (CAO) as established in Kennewick Municipal Code (KMC) Chapters 18.58 and 18.62. *Exhibits 1 and 12.*
3. The irregularly shaped subject property abuts City limits to the south and east. Adjacent parcels to the north and northeast are zoned Agriculture (A). Parcels across S. Olympia Street to the west are zoned Residential Suburban (RS), while those across S. Olympia Street in the north portion of the site are zoned Residential Low Density (RL). The subject property surrounds seven existing residential lots previously subdivided from the same parent parcel as the property subject to the instant application. An eighth pre-

existing parcel at the southeast corner of the site is occupied by the Applicant. The northern third of the site abuts the Kennewick Irrigation District (KID) canal at its east boundary. *Exhibits 1, 4, and 14.*

4. The subject property has a Comprehensive Plan Land Use Designation of Low Density Residential and the associated Residential Suburban (RS) zoning designation. *Exhibit 1.* The purpose of the RS zone is to establish areas for low-density single-family residential buildings, to stabilize and protect residential districts, and to promote and encourage a suitable environment for family life in a semi-rural setting. *KMC 18.03.040(2).*
5. The RS zoning district does not have a minimum or maximum density, instead requiring a minimum lot size of 10,500 square feet. The minimum required lot width is 60 feet. In the instant plat, the smallest lot proposed lot is 11,706 square feet and the narrowest proposed lot width is 90 feet. The proposed plat would result in a density of 2.7 units per acre. All proposed lots appear capable of providing an adequate building envelope outside of required setbacks. Conformance with remaining development standards, including structure setbacks and building height among others, would be reviewed at the time of building permit issuance. Planning Staff indicated that the plat as proposed complies with applicable bulk dimensional standards. *KMC 18.12.010 A.2; Exhibits 1, 14, and 16; Romine Testimony.*
6. Proposed to be developed in three phases, the Applicant intends to sell final platted lots to purchasers who would hire their own builders. Each phase would be provided with its own road and utility infrastructure. Infrastructure for Phase 1, comprised of Lots 1 through 6, is anticipated to be developed in 2017. Phase 2 (approximately 17 lots) and Phase 3 (approximately 21 lots) could begin development in 2018-2019, based on market demand. *Exhibit 16; Fetterolf Testimony.*
7. The plat would provide two access points onto S. Olympia Street. Full street improvements for the new internal residential streets must be constructed per City of Kennewick Standard Street detail 2-1 sheet 1 of 4 or sheet 2 of 4, allowing either curb tight sidewalks or sidewalks separate by planter strip from the roadway. A 40-foot right-of-way with an 18-foot public sidewalk, utility, and irrigation easement is required on each side of all new rights-of-way, except along Newport Place as discussed in Finding 8 below. A separate permit would be required from the Public Works Department for driveways, sidewalks, wheelchair ramps, and utility extensions (water, sewer, street, storm drainage, street lights, fire hydrants, etc.) prior to construction. *Exhibits 1, 8, 16, and 18.*
8. After the initial site plan was circulated for comment, Benton Public Utility District (PUD) indicated that it requires a ten-foot utility easement only on the north side of Newport Place for a tie back into their system. In consultation with PUD representatives and the City's Utility Services Manager, the City Traffic Engineer determined that the 20-foot right-of-way width and a ten-foot utility easement on the north side as proposed in the revised June 13, 2016 site plan would be adequate along the frontage of the existing residences addressed as 5309 and 5353 S. Olympia Street, as other utilities would follow

PUD. This means that approximately 10 feet of previously dedicated right-of-way easement along the south edge of S. Olympia Street could be legally unencumbered in favor of the owner of 5403 S. Olympia Street. *Exhibits 16 and 18; Deskins Testimony; Fetterolf Testimony.*

9. The Applicant submitted a professionally prepared Trip Generation and Distribution Letter, dated February 25, 2016. The letter projected that at full build out the plat would generate 421 average weekday trips, including 33 AM peak hour and 44 PM peak hour trips. The letter indicated that because it was over 600 feet long with no curvature, the road identified as “A” Street at time the Letter was written (now called S. Kent Street) could warrant traffic calming. The Letter acknowledged that traffic impact fees at the rate of \$900 per lot would be due. Traffic impact fees are either collected at the time of building permit issuance or deferred until home sale closing if a Covenant of Payment Obligation is recorded against a given parcel prior to building permit issuance. *Exhibits 1 and 13.*
10. The City's Transportation Engineer accepted the Trip Generation and Distribution Letter in satisfaction of the City's traffic review requirements. The City's Engineer noted that the southeastern corner of the then proposed S. Kent S. Olympia Street intersection was not consistent with City standard intersection radius requirements and needed to be changed. He also recommended that the private drive for the existing residence at 5389 S. Olympia Street be closed and the parcel be accessed from future S. Kent Street along the lot's east boundary. The City Engineer required one speed hump to be installed near the south edge of Lot 7 in Phase 2. *Exhibits 1 and 8; Deskins Testimony.*
11. The Applicant submitted a professionally prepared critical area report addressing the site's regulated erosion hazard and steep slope critical areas. The City's critical area ordinance is intended to control slope stability and not to prohibit development unless slopes exceed 40%. After site investigation, the Applicant's consultant discovered that significant volumes of imported fill material have been placed at the site. Some of the fill was transported to the site and placed as controlled engineered fill in 2014; however some of the deeper fill material included “large volumes of miscellaneous trash and debris” and there were indications that the deeper materials had not been placed as competent engineered fill. *Exhibit 12.* The critical area report recommendations included clearing the site of the non-engineered fill among other items. Planning Staff recommended conditions that would require site development work to be done under the observation of a qualified engineer who that can certify the work's compliance with all recommendations of the critical area report. Lot specific geotechnical foundation investigations would be required for each lot prior to building permit issuance. *Exhibits 1 and 12.*
12. Geotechnical evaluations performed in conjunction with critical area review of the subject property showed that infiltration was a feasible method for managing stormwater. Runoff from pollution generating surfaces (driveways and streets) would be directed into catchbasins intended to be developed with biological water quality treatment options including landscaping and amended soils. Roof and other non-pollution generating

surface runoff would be directed to dry wells. City of Kennewick stormwater standards require residential subdivisions to be designed to retain and dispose of a 25-year, 24-hour event for the developed state and the 24-hour event for the natural pre-developed state. A comprehensive storm drainage plan would be required prior to approval of construction plans for any phase of work. Prior to final plat approval the Applicant would be required to submit detailed civil engineering drawings for review and approval to the Public Works Department, including a stormwater plan consistent with City standards. The Applicant's engineers are aware of the requirements. *Exhibits 1 and 8; Fetterolf Testimony.*

13. All proposed lots would be connected to municipal water and sewer service; the Applicant would be required to extend the mains to and through the plat, with a stub to each lot. An existing eight-inch waterline is available at S. Olympia Street near proposed Kent Street. There is an existing eight-inch sanitary sewer line at S. Olympia Street near W. 52<sup>nd</sup> Avenue that can be extended to serve the plat. Comprehensive water and sewer plans would be required to be submitted by the Applicant and approved by the City for the entire plat prior to civil construction plan approval. All new water mains must be looped to avoid buildup of stagnant water. *Exhibits 1 and 8.*
14. In the initial review of the proposed plat, the City informed the Applicant that municipal water would not be allowed to be used for irrigation within the plat. *Exhibit 8.* Nine of the proposed lots were believed to be in or partially in the Kennewick Irrigation District service boundary. After subsequent communication with the KID, it was discovered that the subject property was considered non-irrigable by KID because it was above the adjacent canal and did not have a water rights allocation. The process to add the remaining lots into the KID service area could take three to five years and success was not a guaranteed outcome. Based on these facts, the City determined that municipal water would be allowed for irrigation of the proposed lots. *Exhibit 17.*
15. All areas disturbed during lot development and left undeveloped, including individual lots, would be required to be hydroseeded and maintained in a vegetated condition until development to prevent dust impacts to surrounding properties. Planning Staff recommended a condition requiring a landscape plan to be submitted for review and approval prior to final plat approval. Additionally, a maintenance agreement for all common open space areas must be submitted and approved by the City Attorney and recorded against the property. The Applicant agent indicated that landscaping strips would be the only common open space; there are no open space or stormwater tracts that would be owned in common by lot owners. *Exhibit 1; Fetterolf Testimony.*
16. Based on the City's Comprehensive Park Plan, the plat is required to dedicate 0.395 acres for public parkland. Because the area is too small for use on-site, park fees are required in lieu of dedication of park land to mitigate impacts to park zone 6E. Payment of the fees would be required prior to signing the final plat mylar based on the percentage of lots being final platted per phase. *Exhibits 1 and 7.*

17. The plat is located within the boundaries of the Kennewick School District and would be served by Sagecrest Elementary, Horse Heaven Hills Middle, and Kennewick High Schools. According to correspondence dated June 6, 2016 from the Kennewick School District, the District has capacity to add students at all levels and at the three affected schools. Due to the distance from the plat to these schools, students living in the proposed subdivision would be bused to all three schools. All new streets in the plat would be provided with five-foot wide sidewalks connecting to S. Olympia Street, which itself was recently reconstructed with new sidewalks on both sides. Therefore, safe walking to bus stops would be provided. *Exhibits 1 and 15.*
18. The Kennewick Fire Department reviewed the proposal and submitted comments requiring fire hydrants at all intersections and at specified 500-foot spacing along the proposed streets. *Exhibit 8.*
19. Staff indicated that the proposed plat generally conforms to the City's Comprehensive Plan due to conformance with the following goals and policies:
  - Urban Area Policy 3: Promote new growth consistent with the Comprehensive Land Use Map, the Capital Facilities Plan and the Capital Improvement Plan.
  - Residential Goal 1: Guide the design of new residential developments to be compatible with adjacent residential areas.
  - Residential Goal 3: Promote a variety of residential densities with a minimum density target of 3 units per acre as averaged throughout the urban area.
  - Residential Goal 4: Encourage residential development only in urban areas where services can be provided.
  - Residential Policy 5: Provide provisions for parks, schools, drainage, transit, water, sanitation, infrastructure, pedestrian, and aesthetic considerations in new residential developments.
  - Housing Goal 1: Support and develop a variety of housing types and densities to meet the diverse needs of the population.
  - Critical Areas And Shoreline Goal 3: Regulate or mitigate activities in or adjacent to critical areas or the shoreline to avoid adverse environmental impacts.

*Exhibit 1.*

20. The City of Kennewick acted as lead agency in review of the proposal for compliance with the requirements of the State Environmental Policy Act (SEPA). After evaluating the complete application materials and the environmental checklist, the City's Responsible Official issued a mitigated determination of non-significance (MDNS ED 16-36) on April 27, 2016 requiring mitigation of park impacts through the payment of

fees (discussed in finding 16 above). Per the MDNS, park fees in the amount of \$2,697.02 are required to be paid. *Exhibits 1 and 7*. The MDNS was not appealed. *Exhibit 1; Romine Testimony*.

21. The application was submitted on March 4, 2016 and determined to be complete March 17, 2016. Notice of application was mailed to owners of surrounding properties on March 17, 2016 and posted on-site on May 25, 2016. Notice of public hearing was mailed to surrounding property owners on May 25, 2016 and published on May 29, 2016. *Exhibits 1 and 3*.
22. The following agencies were notified of the application on March 17, 2016: Benton Clean Air Authority, Ben Franklin Transit, Benton County, Benton Franklin Health Department, Bonneville Power Administration, Cascade Natural Gas, Charter Communication, City of Richland, Columbia Irrigation District, Consolidated Tribes of Umatilla Indian Reservation, Department of Ecology SEPA Unit, Department of Fish and Wildlife, Frontier, Kennewick Irrigation District, Department of Natural Resources SEPA Center, Kennewick School District, US Army Corp of Engineers, WSDOT, and the Yakima Nation. *Exhibit 9*.
23. Kennewick Irrigation District (KID) provided review comments citing the KID requirements for subdivisions and requesting conditions related to design, grading, construction, and stormwater systems addressing, among other items, mitigation of runoff into the soils above the canal. No recommendation was given regarding approval. *Exhibit 9*. A KID representative attended the hearing to clarify it had since been determined that no part of the canal right-of-way was located within the subject property. KID requested that the site boundary along the canal be fenced. *Testimony of Ben Woodard*. The Applicant agent has met with KID and is satisfied that that development can satisfy all KID requirements. *Fetterolf Testimony*.
24. The Bonneville Power Administration (BPA) commented that the proposal would not directly impact the BPA facility in the area and that the agency had no objection to this application. *Exhibit 9*.
25. Prior to and at the public hearing, neighbors submitted comments expressing the following concerns: that the housing development would increase traffic in what used to be a quiet peaceful area that was safe for children to play and has already been overwhelmed by increase traffic from highway changes; that current traffic does not observe the speed limit of 35 mph and frequently exceeds 50 mph and more down the steep curve of S. Olympia Street; concern over the location of the proposed ingress/egress points in relation to existing residences; and concern that road and other construction may destabilize site slopes, damaging existing driveways and a private pool. One neighbor whose driveway abuts proposed Newport Place (Hodges) stated that he would prefer the road to remain in its existing, more rural condition in order to discourage increased traffic in the vicinity. *Exhibits 10 and 20; Testimony of Floyd Hodges and Robert Davis*.

26. Regarding the request to leave Newport Place in its current condition, Planning Staff testified that the project is required by code to improve the road up to current standards. It is not possible to retain the road in its current condition. Staff noted that Mr. Hodges, who'd made the request, would acquire ten feet of additional property from the plat. *Romine Testimony.*
27. In response to public comment, the Applicant agent noted that Mr. Hodges concerns about the stability of the resulting embankment are valid. The factor driving the elevation of the new road bed would be entering and exiting sight distance, which speaks to the neighbor's concerns about traffic safety. Mr. Fetterolf noted that the existing road drops off too fast and that it is anticipated that it would be raised near the intersection. Any retaining walls placed during road construction in that location would be engineered if greater than four feet in height. The Applicant agent also met with the owners of the parcel at 5289 S. Olympia, who expressed concerns about construction impacts to their pool. Those owners, the Wildes, expressed concern regarding view preservation in addition to protection of their pool. The roadway to be called S. Kent Street would actually be placed farther than previously thought from their pool - at least 30 feet. Also, the Applicant offered to resculpt the ground contours adjacent to their pool. These measures would afford additional protection to protect the pool from vibration-related damage during construction. The Applicant agent discussed possible configuration of the new intersection with the Wildes, primarily related to providing adequate sight distance considering both the curve and the elevation change. An agreement was reached that protected the Wildes' views and made them comfortable agreeing to relocate their driveway off of Olympia Street and onto Kent Street. *Fetterolf Testimony; Exhibit 19.* The Wildes did not testify at the public hearing to further forward their concerns. One neighbor testified that he felt the Applicant has taken all appropriate action and would continue to listen to neighbors to ensure their concerns are addressed. *Testimony of Robert Davis.*
28. Upon complete review, and considering evidence offered at hearing, Planning Staff submitted the position that the proposed plat would be harmonious with the surrounding properties and would comply with all applicable development standards and Comprehensive Plan policies. Staff recommended approval with conditions. The Applicant waived objection to the recommended conditions of approval. *Exhibit 1; Romine Testimony; Fetterolf Testimony.*

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner is authorized to hear and decide applications for preliminary plat pursuant to KMC 4.02.080(b) and 17.10.080.

### **Preliminary Plat Criteria for Review**

Pursuant to KMC 17.10.080(1), an application for preliminary plat may be approved only when the record demonstrates conformance with the Comprehensive Plan, comprehensive water plan, utilities plan, the Comprehensive Park and Recreation Plan, and when the record demonstrates that appropriate provisions will be 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 shall consider all other relevant facts and other planning features that assure safe walking conditions for students who only walk to and from school.

### **Conclusions Based on Findings**

1. As conditioned, the plat would be consistent with applicable goals and policies of the City of Kennewick Comprehensive Plan. The subject property is undeveloped RS-zoned land at the edge of the City limits. The proposed relatively large lots would constitute infill development consistent with the City's vision for the vicinity and would complement existing surrounding large lot development. City water and sewer are available; the Applicant would be required to extend utilities to each lot. Non-engineered fill historically placed on-site would be removed during site preparation and each lot would be subject to geotechnical review prior to building permit issuance to ensure compliance with requirements of the City's critical areas ordinance and safety related to site slopes and erosion potential. Conditions of approval would ensure that development is consistent with all applicable City utility, road, stormwater, and fire standards and that the project's park impacts are mitigated. *Findings 2, 3, 4, 5, 11, 13, 14, 16, 18, 19, and 23.*
  
2. With conditions, all necessary findings for the public health, safety, and general welfare have been met. Single-family residential development is permitted in the RS zone; the proposed density comports with zoning and Comprehensive Plan designations for the subject property. As conditioned, the proposed new internal roadways would comply with applicable City street standards, provided that the reduced right-of-way width along Newport Place as approved by the City Public Works and Traffic Engineer may be allowed. Impacts of the new trips generated by the 44 lots would be mitigated through payment of traffic impact fees. Traffic calming would be triggered by development of the second phase and addressed during Phase 2 infrastructure construction. A stormwater plan demonstrating compliance with the City's stormwater standards would be required at the time of civil engineering review. A condition would ensure compliance with the requirements of the KID subdivision approval process. Common open spaces, primarily consisting of planter strips along new internal roadways, would be landscaped and maintained by the Applicant until lot sale. Disturbed areas would be hydroseeded to prevent dust impacts. The Kennewick School District has capacity at all levels to serve new schools aged residents of the plat. All K through 12 public school students residing in the plat would be bused to their respective schools; sidewalks built on-site would connect to existing sidewalks off-site to ensure safe walking to bus stops. Provisions for parks and recreation would be made through payment of park impact fees in lieu of dedication. The proposal was reviewed for compliance with the requirements of SEPA and the issued MDNS was not appealed. *Findings 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 20, 22, 23, 24, 25, 26, 27, and 28.*

## DECISION

Based on the preceding findings and conclusions, the requested approval of a preliminary plat subdividing two parcels totaling 19.8 acres in Kennewick, Washington into 44 single-family residential lots is **GRANTED** subject to the following conditions:

1. The Applicant shall comply with City of Kennewick regulatory controls, policies and codes, including the Single-family Residential Design Standards for the Single-family lots.
2. All fees required by the City shall be paid prior to the approval of the final plat, with the exception of Traffic Impact Fees due at the time of building permit unless deferred to closing of the home sale with a recorded Covenant of Payment Obligation.
3. The Applicant shall construct residential streets per latest City of Kennewick Standard Specifications and Details. The internal roadways shall conform with City of Kennewick standard.....standard detail 2-1 sheet 1 of 4 (curb tight sidewalk) or 2-1 sheet 2 of 4 (separated sidewalk) for residential streets, except as specifically varied herein along Newport Place as shown on the site plan at Exhibit 16.
4. Preliminary Plat 16-02/PLN-2016-00631 approval expires five years from the approval date. The City can grant an extension however an extension needs to be applied for before the preliminary plat expires.
5. Development shall be in conformance with the plat drawing in the record at Exhibit 16, subject to the approval of the City's Traffic Engineer with regard to the radius of the S. Kent Street/S. Olympia Street intersection. South Kent Street may need to be relocated if the adjacent property owners do not grant an 18-foot sidewalk, utility, and irrigation easement.
6. Per the Geological Study/Critical Area Report dated February 2016, site development shall provide "positive drainage" at the top of slopes to divert water from the face.
7. Grading shall be inspected by a qualified geotechnical engineer, and at the completion of grading it must be certified that cut and fill is per the recommendations of the Geological Hazard Study and Critical Areas Report prepared by GN Northern, Inc. This includes clearing the site of non-engineered fill per the recommendations on page 28 of Exhibit 12.
8. Lot specific geotechnical foundation investigations will be required for individual homes and structures prior to issuing a building permit.
9. 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 materials, and ground cover prior to final plat approval. The landscape plan shall be prepared by a licensed landscape architect or licensed landscape installer drawn to a legible scale.

10. All landscaped areas shall be irrigated with an automatic sprinkler or drip irrigation system. Xeriscape landscaping is encouraged.
11. If separate tracts of land or common area are used for Arterial or Residential Street landscape, the Applicant shall execute a written agreement to the satisfaction of the City Attorney which will allow the City to make arrangements for maintenance of the common areas, open spaces, private roads, access driveways, and landscaped areas should the Homeowners' Association (or developer if no HOA) fail or refuse to maintain these areas. The arrangement must be recorded prior to issuance of the first building permit.
12. Site development shall comply with the Public Works comments in the record at Exhibits 8 and 17.
13. Site development shall comply with Traffic Engineer comments in the record at Exhibits 8 and 18.
14. Site development shall comply with the requirements of the Kennewick Irrigation District approval process.
15. The Applicant shall submit a water, sewer, and storm comprehensive plan for the entire site. The comprehensive plans need to be approved by the City prior to approval of Phase 1 construction plans.
16. Fire lanes and dead end streets over 150-feet in length shall be provided with an approved area for turning around a fire apparatus.
17. The Applicant shall install fire hydrants at intersections and at 500-foot spacing along new internal roadways and looped water mains in accordance with City engineering standards and IFC Appendix C.
18. During construction, it shall be the Applicant's responsibility to provide dust control method(s) such as hydroseeding for all areas of the site that are disturbed. Re-hydroseeding may be required.
19. The Applicant shall pay Park Mitigation Fees in the amount of \$2,697.02 for impacts to Park Zone 6E. Fees will be collected at the final plat based on a percentage of lots being final platted.

DECIDED June 27, 2016.

By:



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Sharon A. Rice  
City of Kennewick Hearing Examiner