

**BEFORE THE LAND USE HEARINGS EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Fifth Plain Creek LLC for) **ORDER RE-OPENING**
preliminary plat approval to divide 11.67-acres into 44 lots in) **THE RECORD**
the R1-10 & R1-20 zones southwest of NE 182nd Avenue &) **PLD2016-00010¹**
NE 81st Circle² in unincorporated Clark County, Washington) **(5th Plain Creek Phase 3)**

A. SUMMARY

1. The applicant, Fifth Plain Creek LLC, requests approval to divide the roughly 11.67-acre parcel into 44 lots.

a. The site is located in the southwest quadrant of the intersection of NE 182nd Avenue and NE 81st Circle. The legal description of the subdivision parcel is tax lot 168622-000 (the "site"). The northeastern portion of the site and properties to the northeast are zoned R1-20 (Low Density Residential, 20,000 square foot minimum lot size). The remainder of the site and abutting properties to the northwest, east, and south are zoned R1-10 (Low Density Residential, 10,000 square foot minimum lot size). Properties to the west are zoned R1-7.5 (Low Density Residential, 7,500 square foot minimum lot size).

b. The site is currently vacant. The applicant proposes to construct a new single-family detached dwelling on each of the proposed lots. All proposed lots will comply with the minimum dimensional standards for the R1-10 and R1-20 zones, as modified by the density transfer provisions. Phases 1 and 2 were previously approved for 69 lots and a future development lot (which is now proposed as Phase 3) under PLD2015-00026 and SHL2015-00025. Clark Public Utilities and the City of Vancouver will supply domestic water and sanitary sewer service respectively to the site.

c. A Shorelines Substantial Development Permit will be required for a pedestrian bridge to cross 5th Plain Creek; a Shorelines Conditional Use permit will be required for a sewer line that will be attached to the underside of the bridge. Also, offsite wetland mitigation (for small wetlands proposed to be filled for Phase 3) on a 70.39-acre parcel located in the AG-20 district (tax lot 115621-190) will require a Shorelines Substantial Development Permit.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Clark County Hearing Examiner Joe Turner (the "examiner") conducted a public hearing about the application on August 25, 2016. At the conclusion of the public hearing, the examiner ordered the record held open for one day to allow the applicant to submit evidence regarding posted notice on the site and for the County to submit copies of the traffic

¹ This decision also addresses SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023.

² The applicant also requests approval of a wetland mitigation site at 17212 NE 88th Street.

studies for the prior review of Phases 1, 2 and 3 of this development (the “2015 traffic study,” Exhibit 28 of PLD2016-00010) and Hearing Examiner Daniel Kearns’ decision approving Phases 1 and 2 (Exhibit 26 of PLD2016-00010). The record in this case closed at 5:00 p.m. August 26, 2016.

3. After review of the evidence submitted during the open record period, the examiner noted significant differences between the 2015 and 2016 traffic studies for the predicted operation of the intersection of NE 182nd Avenue and NE Fourth Plain Boulevard.

a. The 2015 traffic study concluded that in 2018, with full buildout of all three phases, the southbound approach to the NE 182nd Avenue and NE Fourth Plain Boulevard intersection will operate at:

i. LOS F with an average delay of 142.7 seconds in the AM peak hour; and

ii. LOS C with an average delay of 19.4 seconds in the PM peak hour. (Table 13a of Exhibit 28).

b. The 2016 traffic study concluded that in 2019, with buildout of proposed Phase 3 (and traffic from previously approved Phases 1 and 2), the southbound approach to the NE 182nd Avenue and NE Fourth Plain Boulevard intersection will operate at:

i. LOS E with an average delay of 37.2 seconds in the AM peak hour; and

ii. LOS E with an average delay of 36.1 seconds in the PM peak hour. (Table 6 of Attachment K of Exhibit 1).

e. All other unsignalized intersections analyzed in the traffic studies are projected to operate at roughly similar levels of service and delay between the 2015 and 2016 traffic studies.

4. The applicant failed to provide any justification for these significant changes in the predicted intersection operations.

a. Mr. Stonex argued that a bridge construction project on NE 88th Street that was underway when the 2015 traffic analysis was conducted, was completed when the 2016 traffic analysis occurred, and that project may have impacted the results of the traffic studies. However Mr. Jardin testified that, based on his review, the bridge construction project after the 2015 analysis was performed and was completed prior to the 2016 analysis. Therefore the bridge project had no impact on the analyses.

5. The NE 182nd Avenue and NE Fourth Plain Boulevard intersection is operating very near capacity. Therefore even minor changes in the analysis may preclude approval of this development without mitigation to that intersection.

a. The County approved Phases 1 and 2 of this development without mitigation because, although the development was projected to cause this intersection to operate at LOS F during the AM peak hour, Phases 1 and 2 would only generate four vehicle trips through that intersection during the AM peak. If phases 1 and 2 generated one more trip through that intersection, the application would not comply with CCC 40.350.020.G.1.c(1). (p. 34 of Exhibit 28). Therefore the applicant withdrew proposed Phase 3 from the prior project and the County approved Phases 1 and 2.

b. The current project, proposed Phase 3, will generate 14 additional southbound trips through this intersection during the AM peak hour (Figure 6 of Attachment K of Exhibit 1). The applicant's 2016 traffic analysis concludes that the applicant is not required to mitigate impacts to the NE 182nd Avenue and NE Fourth Plain Boulevard intersection because only two of the three criteria listed in CCC 40.350.020.G.1.c are met. However the applicant failed to explain how Phase 3, which could not be approved in 2015 due to transportation concurrency issues, can now be approved in 2016.

c. The applicant's 2016 traffic analysis purports to demonstrate that this Phase 3 project can meet concurrency. However, given the significant unexplained differences between the 2015 and 2016 traffic analyses, the examiner cannot find that traffic from this development will meet County concurrency requirements.

6. The examiner could not raise this issue previously, because the 2015 traffic analysis was not submitted until after the hearing. The examiner finds that the applicant should be permitted an opportunity to respond to this issue and explain the discrepancies between the 2015 and 2016 analyses. Therefore the examiner will reopen the record in this case to allow all parties to address this issue.

B. DISCUSSION

1. Every party is entitled to an opportunity to be heard and present and rebut evidence. CCC 40.510.030.D(4) authorizes the examiner to consider and grant or deny any parties request to hold open the record. Nothing in the Code precludes reopening the record open after the public hearing, provided all parties are provided an opportunity to respond in writing to any new evidence that is introduced.

2. The examiner finds that reopening the record to allow all parties an opportunity to address the inconsistencies in the traffic studies is warranted to serve the interests of a full and fair review of this application, provided the process affords all parties a meaningful opportunity to respond to that new evidence. The applicant must bear the burden of proof that the proposed development can comply with the applicable approval criteria. CCC 40.510.030.H. The applicant should be allowed an adequate opportunity to explain the

conflicts between the traffic studies. Accordingly the Examiner concludes that the public record should be reopened subject to appropriate procedural safeguards.

C. ORDER

1. The Examiner reopens the public record in the matter of PLD2016-00010 (5th Plain Creek Subdivision, Phase 3), subject to the following schedule. The record is hereby ordered open until:

a. 5:00 P.M., Tuesday, September 20, 2016, for the applicant to address the conflicts between the July 16, 2015 traffic study (Exhibit 28) and the April 27, 2016 traffic study (Attachment K of Exhibit 1).

b. 5:00P.M., Tuesday, September 27, 2016 for County staff to respond in writing to the new evidence submitted during the first open record period;

c. 5:00 P.M., Tuesday, October 4, 2016, for the public to review and respond to the new traffic information provided by the applicant and County staff; and

d. 5:00 P.M., Tuesday, October 11, 2016, for the applicant to submit a final argument, without any new evidence. The applicant may request closure of the public record in this case any time after 5:00 P.M., Tuesday, October 4, 2016.

2. Any new evidence and testimony must be in writing and must be received by Clark County by 5 P.M. before the relevant closing date.

3. As soon as practicable, Clark County shall mail a copy of this Order to all persons who are parties in this matter.

4. The Examiner will issue a written final order within ten (10) working days after the close of the record (i.e., by October 25, 2016).

DATED this 6th day of September 2016.



Joe Turner, AICP, Hearings Examiner

Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
Planner	Clark County	Jan Bazala						
Applicant/Owner	Fifth Plain Creek, LLC		14010A NE 3rd Ct	Ste 106	Vancouver	WA	98685	ROB@HINTONDEVELOPMENT.COM
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Contact Person	Olson Engineering	Mike Odrien	222 E Evergreen Blvd		Vancouver	WA	98660	MIKEO@OLSONENGR.COM
Utility Contact								
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	City of Vancouver	Kristin Lehto						Kristin.Lehto@cityofvancouver.us
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		Doug Faulkner	18004 NE 81st Cir		Vancouver	WA	98682	dougfaulkner1950@comcast.net
		Bill Strom	19714 NE 91st Street		Vancouver	WA	98682	stromwl@aol.com
		David Alt	22811 NE 83rd St		Vancouver	WA	98682	



EXHIBIT LIST

Project Name: 5TH PLAIN CREEK SUBDIVISION PHASE 3

Case Number: PLD2016-00010; SEP2016-00024; SHL2016-00020;
HAB2016-00037; FLP2016-0008; EVR2016-00023

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1	5/13/16	Applicant	Application Package
2	7/6/16	CC Land Use	Notice of Type III App w/SEPA
3	7/6/16	CC Land Use	Affidavit of Mailing – Exhibit 2
4	7/13/16	CC Land Use	Early issues email
5	7/13/16	CC Concurrency	May 24 th Concurrency FC determination
6	7/13/16	WSDOT	2015 Letter regarding impacts to SR500/NE 182 nd Avenue intersection
7	7/18/16	Evergreen Public Schools	SEPA comment letter
8	7/20/16	Applicant	Additional narrative regarding sewer plan
9	7/26/16	H. Lee & Associates	Response to WSDOT comments on SR500/NE 182 nd intersection
10	7/26/16	Landerholm	Legal opinion on WSDOT jurisdiction
11	7/31/16	Applicant	Applicant's affidavit of posting
12	8/3/16	CC Land Use	Relevant pages of Ordinance 2013-12-20 regarding urban holding
13	8/4/16	CC Development Engineering	Road Modification recommendation
14	8/5/16	Department of Ecology	SEPA comments
15	8/4/16	Applicant/Cascadia Ecological	August 3, 2016 Revised mitigation plan
16	8/4/16	Applicant/Cascadia Ecological	April 14, 2016 Revised mitigation plan
17	8/10/16	CC Land Use	Staff report and recommendation
18	8/10/16	CC Land Use	Affidavit of Mailing Exhibit 17
19	8/15/16	CC Land Use	Affidavit of Publication – The Reflector
20	8/22/16	Applicant	Request for change in conditions D-5.b and c

21	8/22/16	WSDOT	Recommendation to require mitigation at SR500/NE 182 nd intersection
22	8/24/16	CC Concurrency/WSDOT	Email string regarding SR500/NE 182 nd intersection
23	8/23/16	Applicant	Revisions to lot width diagram
24	8/25/16	Richard Bender	Copy of WSDOT letter (same as Exhibit 21)
25	8/25/16	Richard Bender	List of citizens opposing hearing time for lifting of UH in 2013
26	8/25/16	Applicant	Copy of decision for PLD2015-00026
27	8/25/16	Applicant	Photos of posted sign taken 8/25/16
28	9/1/16	CC Land Use	Traffic study for PLD2015-00026
29	9/1/16	CC Land Use	Revised Traffic study for PLD2015-00026 (Exhibit 24 to PLD2015-00026)

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810