

**BEFORE THE HEARING EXAMINER  
FOR ISLAND COUNTY**

In the Matter of the Application of	)	No. PLP 062/19
	)	
<b>Dustin Martin</b>	)	Gilligan Island Acres Subdivision
	)	
For Approval of a Preliminary Plat	)	<b>FINDINGS, CONCLUSIONS, AND DECISION</b>

**SUMMARY OF DECISION**

The request for a preliminary plat to subdivide a 7.9-acre parcel into seven residential lots, with associated improvements, at 472 Lehman Drive is **APPROVED**. Conditions are necessary to ensure that the proposed plat complies with the Island County code and to mitigate specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 11, 2020, using remote technology due to the COVID-19 pandemic. The record was left open until June 15, 2020, to assure that any member of the public having difficulty connecting to the remote hearing would have the opportunity to provide comments on the proposal and to allow the Applicant and County staff to submit additional information requested by the Hearing Examiner. No additional comments were received, the parties timely submitted the additional information requested, and the record closed on June 15, 2020.

Testimony:

The following individuals testified under oath at the open record hearing:

Michelle Pezley, County Senior Planner  
Kimberly Busted, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated May 20, 2020
2. Master Land Development Permit Application, received February 27, 2019
3. SEPA Environmental Checklist, dated December 18, 2019
4. Certificate of Transportation Concurrence, dated April 18, 2018; Trip Generation Analysis, Gibson Traffic Consultants, Inc., dated April 12, 2018
5. Preliminary Long Plat Subdivision 7 Lot Long Plat (Sheet 2 of 3), dated April 23, 2020
6. Letter from Dave Sears, Driftwood Shores Water System, to Elizabeth Majors, Water Availability, dated December 1, 2017

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7. One Site Registration (septic), Island County Public Health, dated May 15, 2018; Eight (8) Site Registrations (septic), Island County Public Health, dated December 26, 2018
8. Application for Access to County Right of Way, approved August 11, 1993
9. Critical Area Study, Island Botanical Service, dated March 20, 2013
10. Letter from Chuck Burrows to Jonathan Lange, received April 1, 2019
11. Letter from Jennifer Jelden to Dugan McCloskey, dated August 16, 2019; Washington DNR Forest Practices Informal Conference Note, dated July 2, 2019; Letter from Dave Sears to Wendell Johnson, dated June 10, 2019
12. Memo from Dugan McCloskey to Jonathan Lange, dated February 18, 2020
13. Memo from Dugan McCloskey to Jonathan Lange, dated September 25, 2019
14. Memo from Dugan McCloskey to Jonathan Lange, dated May 2, 2019
15. Memo from Tamra Patterson to Jonathan Lange, dated September 6, 2019
16. Memo from Clea Barenburg to Hiller West, dated May 12, 2020
17. Memo from Clea Barenburg to Jonathan Lange, dated December 30, 2019
18. Memo from Clea Barenburg to Jonathan Lange, dated September 30, 2019
19. Memo from Clea Barenburg to Jonathan Lange, dated April 8, 2019
20. Memo from Clea Barenburg to Jonathan Lange, dated March 28, 2019
21. Letter from Kimberly Busted to Hiller West, dated April 22, 2020
22. Email from Hannah Rae Liss to Jennifer Jelden, dated February 10, 2020, with email string
23. Determination of Nonsignificance, dated March 12, 2020
24. Notice of Complete Application, dated March 12, 2019
25. Notice of Application with SEPA, undated, with preliminary plat map (Sheet 1 of 1), drawn October 2018
26. Affidavit of Posting the Public Notice Sign, dated March 14, 2019
27. Affidavit of Mailing, dated March 11, 2019
28. Affidavit of Publication, *Stanwood Camano News*, published March 19, 2019
29. Affidavit of Mailing, dated March 18, 2020
30. Letter from Lourdes Shuart to Kimberly Busted, dated May 12, 2020
31. Preliminary Long Plat Subdivision Proposed Map (Sheet 1 of 1), dated April 23, 2020
32. Inadvertent Discovery Plan, received June 11, 2020
33. Letter from Kimberly Busted to Michelle Pezley, dated June 15, 2020
34. Email from Bill Poss to Michelle Pezley, dated June 11, 2020, with email string

Based upon the testimony and documents submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

## **FINDINGS**

### Application and Notice

1. Dustin Martin (Applicant) requests approval of a preliminary plat to subdivide a 7.9-acre parcel into seven residential lots, with associated improvements. The property is located

at 472 Lehman Drive, Camano Island.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 5; Exhibit 31.*

2. Island County (County) determined the application was complete on March 12, 2019. On March 11, 2019, the County mailed notice of the application to property owners within 300 feet of the subject property, with a comment deadline of April 2, 2019. On March 14, 2019, the Applicant posted notice of the application on the property. On March 19, 2019, the County published notice in the *Stanwood Camano News*. The County issued a notice of the open record hearing associated with the application on May 12, 2020, as required by the municipal code. The County received one public comment in response to its notice materials: Chuck Burrows commented by letter, received April 1, 2019, about two existing wells on proposed Lot 2 and pre-existing power and water easements associated with the well. Both County staff and the Applicant addressed these concerns prior to the open record hearing (Exhibits 11 and 12). *Exhibit 1, Staff Report, page 3; Exhibit 10; Exhibit 11; Exhibit 12; Exhibits 25 through 30.*

#### State Environmental Policy Act

3. The County acted as lead agency to analyze the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355. The County provided notice of the SEPA comment period concurrently with the notice of application, with a comment deadline of April 2, 2019. No comments specific to the proposed SEPA determination were received. The County reviewed the Applicant's Environmental Checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment.<sup>2</sup> Accordingly, the County issued a Determination of Nonsignificance (DNS) on March 12, 2020. No comments were received, and the SEPA determination was not appealed. *Exhibit 1, Staff Report, page 3; Exhibit 3; Exhibit 23; Exhibits 25 through 29.*

#### Comprehensive Plan and Zoning

4. The property is designated "Rural Residential" by the County Comprehensive Plan and is within an area designated for "Rural Areas of More Intensive Development" (RAIDs) under the Growth Management Act, RCW 36.70A.070(5)(d), the "Country Club Raid." *Island County Comprehensive Plan, pages 33 through 35.* The purpose of the Rural Residential designation is to permit land uses that are compatible with the rural character and to preserve open space, agricultural opportunities, recreational opportunities, and protection of natural resources. In addition, RAIDs support a variety of rural densities,

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<sup>1</sup> The property is identified by Tax Assessor Parcel No. S6510-00-00023-0. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included on the preliminary plat map. *Exhibit 31.*

<sup>2</sup> This included review of a previous Critical Area Study, prepared by Island Botanical Services, received on February 27, 2019. In addition, the County's Critical Areas Planner noted that two site visits confirmed that there are no wetlands or other critical areas on-site. *Exhibit 9; Exhibit 22.*

uses, essential public facilities, and rural governmental services needed to serve permitted densities and uses. *Island County Comprehensive Plan, pages 33 and 34.* County staff determined the proposed residential development would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, page 5.*

5. The property is zoned Rural Residential (RR). The purpose of the Rural Residential zone is to define the logical outer boundary of a pattern of development and density that is more intensive than the density permitted in the Rural zone. *Island County Code (ICC) 17.03.070.* The Applicant proposes seven lots between 30,092 and 97,851 square feet, which would meet the density and lot size requirements. The Applicant's proposal would comply with the RR zone's setback requirements, with a 30-foot setback from the East Camano Drive (arterial/collector road), a 20-foot setback from Lehman Drive (local access road/private access road), and five-foot side building setbacks. The proposed lot widths would comply with the 60-foot minimum lot width requirement. *ICC 17.03.070.* Surrounding property is also designated and zoned for rural residential development. *ICC 17.03.180.S.3. Exhibit 1, Staff Report, pages 1, 2, and 5; Exhibit 31.*

#### Existing Site

6. The 7.9-acre property is partly forested, with some pasture and grass, and is currently developed with one dwelling unit (on proposed Lot 2). The property is on the east side of SE Camano Drive, north of the Driftwood Shores Road intersection. The property is relatively flat and there are no critical areas on-site, although wetlands exist to the east, and there are steep slopes to the west of SE Camano Drive. All development, however, would occur far outside any critical areas or their associated buffers. *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 22; Exhibit 31.*

#### Access and Traffic Impacts

7. Six of the lots would have direct access to Lehman Drive, and one of the lots would access Short Road. The lots having direct access to Lehman Drive, however, would each utilize a shared driveway (Lots 2 and 3; Lots 4 and 5; and Lots 6 and 7) reducing the potential for site distance issues along Lehman Drive. Gibson Traffic Consultants, Inc., prepared a Traffic Impact Analysis (TIA) addressing traffic impacts from the proposal. The TIA determined that the proposal would have no significant impacts on area traffic or on specific intersections within the vicinity of the proposed plat. Accordingly, the County issued a Certificate of Transportation Concurrency for the proposal on April 18, 2018, stating that the proposed project meets the adopted level of service standard set forth in the Chapter 11.04 ICC. *Exhibit 1, Staff Report, page 3; Exhibit 4.*

#### Stormwater

8. Cascade Surveying & Engineering, Inc., prepared a Drainage Report (DR) for the proposal, revised June 2019, as well as a stormwater site plan and a stormwater pollution prevention plan. Based on existing soil types, drainage, and infiltration rates, the study determined that the proposed development would maintain the existing drainage patterns and provide sufficient on-site infiltration, through use of Low Impact Development (LID)

techniques. The proposed development would comply with the County's current Stormwater Manual. The proposed development would implement best management practices for the proposed improvements and would infiltrate all water to mitigate the surface water impacts of the proposed development. All lot driveways would be directed to compost-amended vegetated filter strips for treatment prior to dispersion/infiltration. County staff reviewed the proposal and accepted the Applicant's preliminary stormwater proposal. Further review of stormwater would occur, however, prior to site development. *Exhibit 12; Exhibit 31.*

#### Utilities and Services

9. The Island County Fire District #1 and the Island County Public Utility District #1 would serve the proposed development. On March 27, 2019, Island County Public Health received the Applicant's "Water Availability Verification Application." Water service would be provided by the Driftwood Shores Water System, which provided a confirmation letter on December 1, 2017, of water sufficient to serve the proposed development. Driftwood Shores also stated that the Applicant would have the capacity to install a fire hydrant near Lot 7 to ensure adequate fire safety measures are available to serve the plat. Each lot would be served by septic with appropriate drainfields.<sup>3</sup> *Exhibit 1, Staff Report, page 5; Exhibit 6; Exhibit 7; Exhibit 11; Exhibit 12; Exhibit 16; Exhibit 31.*

#### Schools

10. The proposed development would be served by the Stanwood School District. The County noted that the site is not within walking distance of any of the schools that would serve the plat. County staff determined that, because the plat is not within walking distance of any schools, no sidewalks are required for the plat. School bus service, however, would be provided. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 31.*

#### Testimony at Hearing

11. County Senior Planner Michelle Pezley testified generally about the proposal and how it would comply with the County Comprehensive Plan, zoning ordinances, and critical areas ordinances. She explained that, although there are critical areas off-site from the proposed plat, the Applicant submitted a Critical Area Study (Exhibit 9) delineating these critical areas, which included an off-site wetland, a stream, and steep slopes. All development would occur outside any such critical areas or associated buffers. Ms. Pezley further explained that the proposal would meet all requirements related to stormwater management and that the details of the Applicant's stormwater plans would be further reviewed during additional stages of site development. Finally, Ms. Pezley explained in more detail how notice of the remote hearing was provided and explained that such notice was provided to all parties of record and posted on the County's website. *Testimony of Ms. Pezley.*

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<sup>3</sup> The drainfield serving Lot 2 is located on proposed Lot 1. The County reviewed this issue and appropriate easement would be recorded prior to final plat approval documenting this. *Exhibit 16.*

12. Applicant Representative Kimberly Busted testified that the issues raised in the one public comment letter were previously addressed and that she had worked with County staff to address the concerns related to the septic drainfields serving Lots 1 and 2. She further testified that the Applicant generally concurs with County staff's assessment of the proposal but that it would be preferable to keep the record open to allow the Applicant to review the County's final review letter (dated May 13, 2020; Exhibit 16) because she had not yet had an opportunity to review it. Ms. Busted later submitted a letter (Exhibit 33) stating that she concurred with the requirements in the letter.  
*Testimony of Ms. Busted.*

#### Staff Recommendation

13. Ms. Pezley explained how the proposal would meet the requirements for preliminary plat approval under the County code and RCW 58.17.110. Ms. Pezley stated that the County recommends approval of the proposal, with conditions. Ms. Busted testified that the Applicant agrees with the proposed conditions. *Exhibit 1, Staff Report, pages 3 through 10; Testimony of Ms. Pezley; Testimony of Ms. Busted.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner is granted authority by the County Commissioners to receive and examine available information, conduct public hearings and prepare a record thereof, and enter decisions on applications for preliminary plat approval. *ICC 16.13.110.B.2; ICC 16.19.180.*

#### Criteria for Review

The County code provides that no application for preliminary plat approval shall be granted unless it meets the requirements of Chapter 16.06 ICC, and Titles 8, 11, 13, and 17 ICC pertaining to such development. *ICC 16.06.110.* In addition, the application must meet the criteria and standards in Chapter 58.17 of the Revised Code of Washington (RCW). RCW 58.17.110 requires that appropriate provisions must be made for the public health, safety, and general welfare, and 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, including sidewalks and other planning features that ensure safe walking conditions for students who walk to and from school. The application must also demonstrate to the decision maker that the public interest will be served by the approval of the request for subdivision of land and any dedications associated with the subdivision.

The criteria for review adopted by the County Commissioners implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

### Conclusions Based on Findings

1. **With conditions, the proposed development would be consistent with the requirements for approval of a preliminary plat under the municipal code.** The County provided reasonable notice and opportunity to comment on the proposed subdivision. One comment from the public was received prior to the hearing concerning existing wells on the property. The County and the Applicant responded to these concerns and addressed them prior to the open record hearing.

The Applicant presented evidence that the proposed development would be in the public interest because the development would provide single-family residences, compatible with surrounding single-family residential development and consistent with the Comprehensive Plan designation for the property. Access to six of the lots would be from Lehman Drive, and access from one of the lots would be from Short Road. The single-family residential development would conform to the minimum lot size, density, and setback required within the zone. Adequate water service would be provided to the proposed subdivision. On-site septic systems with required drain fields would serve each lot. Stormwater would be infiltrated on-site using low impact development techniques. The Applicant provided a TIA showing that no change in level of service would occur at surrounding intersections. Students would have safe access to schools via a school bus pick-up location. The County reviewed the environmental impacts of the proposed project and issued a Determination of Nonsignificance that was not appealed.

Conditions are necessary to ensure the Applicant complies with County code requirements, complies with the County Public Works and Public Health Department requirements and conditions, carries out erosion and sedimentation control, and complies with the County's Inadvertent Archaeological and Historic Resources Discovery Plan for Island County. *Findings 1 – 13.*

2. **With conditions, the proposal would satisfy the requirements of RCW 58.17.110 for approval of a subdivision.** The criteria and standards for preliminary plat approval in Island County are essentially identical to those in Chapter 58.17 of the Revised Code of Washington (RCW). Based upon the evidence provided at the hearing, it is determined that appropriate provisions would be made for the public health, safety, and general welfare, and 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, including sidewalks and other planning features that ensure safe walking conditions for students who walk to and from school. Approval of this preliminary plat application to subdivide land for development of single-family housing would be in the public interest. Conditions of approval, as detailed below, are necessary to ensure compliance with the standards for preliminary plat approval. *Findings 1 – 13.*

## DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat to subdivide a 7.9-acre parcel into 8 lots, at 472 Lehman Drive, Camano Island, is **APPROVED**, with the following conditions:<sup>4</sup>

1. The final plat must be consistent with the requirements identified in ICC 16.06.120.
2. This decision is a preliminary approval only. A final plat application must be submitted to Island County for review and approval within five years of the approval date.
3. This Preliminary Subdivision approval shall expire if a final plat meeting the requirements of the preliminary plat is not submitted for review within five (5) years of the date of preliminary plat approval, unless an extension has been granted in accordance with Island County code. Provided that any judicial appeal filed and accepted for review after preliminary approval shall automatically stay the time periods referenced above until a final decision on the appeal is rendered.
4. The Applicant must adhere to the conditions, recommendations, and requirements noted in the attached memo dated May 12, 2020 from Island County Public Health (Exhibit 16).
5. The Applicant must adhere to the conditions, recommendations, and requirements noted in the attached memo dated February 18, 2020 from Island County Public Works (Exhibit 12).
6. The Applicant must adhere to the conditions, recommendations, and requirements noted in the attached memo dated September 6, 2019 from Tamra Patterson, Island County Plans Examiner (Exhibit 15).
7. The final plat application shall include a summary on how the conditions are being met.
8. The final plat must conform to the approved preliminary plat (Exhibits 2 and 31) except as specifically authorized by this decision.
9. Prior to final plat approval, all site and off-site improvements required as a condition of preliminary approval shall be complete.
10. All utilities installed on-site shall be underground.
11. All proposed development shall comply with the state noise ordinance, air pollution

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<sup>4</sup> Conditions are necessary to mitigate specific impacts of proposed development and comply with county code.



control regulations, water quality standards, and all other pertinent codes and ordinances.

12. Prior to final plat approval the Applicant shall note on the face of the plat that all structures shall comply with setbacks and site coverage outlined above and set in ICC 17.03.180.S for new lots and will be reviewed with all future building permits.
13. This decision shall not be construed to authorize work, development, construction, or other site modifications in excess of the work, development, construction, and modifications specifically authorized by this decision.
14. The following shall also appear on the face of the final plat:
  - a. The existing parcel number and final plat number must appear at the top right corner of each sheet. The final plat number will be assigned to the plat at the time of submittal. Please show the following on the top right corner of each sheet:
  - b. The name of the subdivision: Gilligan Island Acres
15. The following shall appear under Notes on the final plat:

“Addresses assigned pursuant to RCW 58.17.280 are only approximate. Before, or at, the time of building permit application submittal, an application for an address shall be applied for with a plot plan showing the location of the driveway. Only then will a determination be made if the addresses assigned to meet the requirements of RCW 58.17.280 are accurate or if they will need to be changed.”
16. Prior to starting any work or construction activities, the Applicant shall obtain all required building permits and approvals.
17. This project is required to comply with Washington State and Island County water quality standards, Washington State laws and regulations protecting archaeological sites and resources and all other pertinent State laws, rules, regulations, codes, and ordinances.
18. The conditions identified in this decision are subject to change if any information provided by the Applicant or their authorized representative is found to be inaccurate.
19. The entirety of Exhibit 32, Inadvertent Archaeological and Historic Resources Discovery Plan for Island County, is hereby adopted into this decision by reference. All terms of this adopted document constitute Conditions of Approval for this decision. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with the terms of this adopted attached document, Inadvertent Archaeological

and Historic Resources Discovery Plan for Island County, could constitute a misdemeanor and possible civil penalties and/or constitute a Class C Felony.

**DECIDED** this 29<sup>th</sup> day of June 2020.

A handwritten signature in black ink, appearing to read "Andrew M. Reeves", is enclosed within a thin black rectangular border. The signature is fluid and cursive.

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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center