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Gary N. McLean, Hearing Examiner  
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Re: Request for Reconsideration  
S2022-102 Preliminary Plat of Halara Hills

Dear Mr. Examiner:

We represent Friends of Country Ridge which is an unincorporated association of residents impacted by the proposed preliminary plat of Halara Hills. Members of the unincorporated association provided comment at the public hearing held on September 15, 2022 for the Preliminary Plat of Halara Hills (S2022-102). We are requesting reconsideration of *Findings, Conclusions and Decision* ("Examiner's Decision") issued by City of Richland Hearing Examiner on October 17, 2022.

**Background for Request for Reconsideration – SEVA Access and Associated Conditions.**

Friends of Country Ridge request that the Hearing Examiner reconsider the following determinations made with respect to Secondary Emergency Vehicle Access (SEVA) routes for the proposed preliminary plat:

- (1) Halara Hills neither identified nor established a SEVA route for the preliminary plat as required by RCW 58.17.110 and other applicable law. Hearing Examiner concluded that the identification and location of a SEVA route may be deferred to a later point and time. RCW 58.17.110 provides that a preliminary plat shall not be approved unless the decision-making body makes specific written findings that

“...[a]ppropriate provisions are made for the public health, safety and general welfare..., streets and roads, .....”. RCW 58.17.110(2). The courts have required that appropriate provision requires submission of sufficient evidence supporting a reasonable expectation that the required improvement will be in place for the proposed plat. *JZ Knight v. City of Yelm, et al*, 173 Wn.2d 325, 267 P.3d 973 (2011). Halara Hills has presented no evidence to establish or meet the standard of “reasonable expectation” established by the case law; and

- (2) Hearing Examiner has improperly delegated sole decision-making authority to Richland Fire Marshal with respect to review and approval of an unknown SEVA route and denied the public an opportunity to challenge and review a proposed SEVA route before final plat approval.

By way of background, Hearing Examiner has noted that the applicants for Halara Hills have neither identified nor successfully established an acceptable SEVA route across privately-owned land to serve both the proposed subdivision as well as other properties.<sup>1</sup> This fact is uncontroverted.

The establishment of a SEVA route is critical to not only the protection of residences within the proposed subdivision but is also integral life-safety component in the context of wildland fires, evacuation of all neighborhoods and safety of the community. There was generalized reference to alternative routes and suggestions that this critical life-safety component could be addressed through other unspecified mechanisms or programs.<sup>2</sup>

#### **Applicant Did Not Present Any Evidence That a Specific SEVA Route Was Reasonably Available For Secondary Fire Access.**

Hearing Examiner also found that Halara Hills, a preliminary plat proposing 82 homes, “...should be required to include a Secondary Emergency Vehicle Access (SEVA) route meeting Fire and Public Work standards for such roads.” *Finding 30*. There is no question that secondary access is required but there is *no evidence* of a feasible or viable route. Hearing Examiner did recognize that the road should be constructed in a manner “consistent with other plats approved in recent years ...” with specific standards

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<sup>1</sup> Hearing Examiner recognized the unique location of the proposed subdivision in the context of an undeveloped and uncultivated shrub-steppe environment. *Findings 16-19* (“*There is no credible dispute that the project site is exposed to wildfire hazards, and that the City’s special Wildland Area requirement should be applied to portions of this project.*”). City’s Fire Marshal, Ken Buechler also specifically addressed the need for second emergency vehicle access route (a “SEVA”) during “...real emergency situations, when residents need to be evacuated and the primary access route might be blocked.” *Finding 20*.

<sup>2</sup> Applicants specifically raised the potential of providing sprinklers within the proposed development. City Fire Marshal specifically rejected this option under applicable code provisions and findings related to his testimony confirmed that “...[h]e emphasized that sprinklers in new homes would do nothing to address the need for a secondary emergency vehicle access route (a “SEVA”) during real emergency situations, when residents need to be evacuated and the primary access route might be blocked.” *Finding 20*. Hearing Examiner summarized the applicable SEVA standards in *Finding 22*. Fire Marshal’s testimony was found credible, sworn and un rebutted. *Finding 23*.

set forth in *Condition 13*.

Hearing Examiner may not defer determination of SEVA route to a subsequent date and comply with RCW 58.17.110.

Hearing Examiner specifically found as follows with respect to the final location of any SEVA route.

31. The applicant is correct in arguing that the final location of any SEVA route can be addressed *after preliminary plat approval* and imposed as a requirement that must be satisfied before final plat approval. (See *JZ Knight v. The City of Yelm, et al.*, 173 Wn.2d 325; 267 P.3d 973 (2011) (Washington Supreme Court decision holding that RCW 58.17.110(2), part of the State's subdivision statute, which requires the City to make findings that: "Appropriate provisions are made for the public health, safety and general welfare for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school...." (*Emphasis* added by Examiner) (must be fully satisfied *before final plat approval* and cannot delay the showing until the building permit stage, but may remain less-than-certain as the preliminary plat phase).

*Finding 31.* Applicant is not correct that the location can be established *after* preliminary plat approval. Hearing Examiner's finding is inconsistent with the holding in *JZ Knight v. City of Yelm*.<sup>3</sup> The issue presented in *JZ Knight* was whether sufficient proof had been provided to establish the adequate provision requirements for potable water under RCW 58.17.110. While the exact amount of available water was unknown at the time of preliminary plat hearing, Hearing Examiner found that the City and applicant had provided sufficient evidence to support "a reasonable expectation that ample water would be available at the time the water is required for connection ....". *Id.* 173 Wn.2d at 332. The specific finding included the following language:

On the basis of such evidence, the Hearing Examiner concluded that the requirements of Section 58.17.110 RCW and Sections 15.40.010 and .020

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<sup>3</sup> In *JZ Knight v. City of Yelm*, a preliminary plat was challenged by a neighbor that was concerned about impacts on her domestic water system and the required determination that there was adequate potable water supply for the proposed preliminary plat. *Id.* 173 Wn.2d at 328-329. As in this case, Knight asked the Hearing Examiner to deny the preliminary plat application or at least delay approval until the City demonstrated it had sufficient water rights approved by the Department of Ecology (DOE) to support the proposed developments. Hearing Examiner left the record open and the City and applicant submitted evidence of water rights conveyances and transfers that would purportedly provide sufficient water to serve the planned subdivision. Hearing Examiner granted conditional preliminary plat approval to the applicant but included a condition requiring specific proof of adequate water supply at time of final plat approval or building permit.

*YMC were satisfied by evidence supporting a reasonable expectation that ample water will be available at the time that water is required upon connection and entered findings that appropriate provision was made for potable water.*

*Id.* In this case, there is no evidence supporting a “reasonable expectation” that there is an available SEVA route.

In *JZ Knight*, The court first found that an applicant must make a threshold showing that the proposed preliminary plat is able to comply with applicable zoning ordinances and health regulations.

The importance of preliminary plat approval within the scheme of planning and approving new development demonstrates that the injury Knight alleges is immediate and specific. “A preliminary plat application is meant to give local governments and the public an approximate picture of how the final subdivision will look. It is to be expected that modifications will be made during the give and take of the approval process.” [Citation omitted]. *The applicant must make a threshold showing that the completed development is able to comply with the applicable zoning ordinances and health regulations.*

The court noted that “...the preliminary plat process is not merely an insignificant stage of the proceedings without real consequence.” Halara Hills has submitted no evidence that there is a “reasonable expectation” that a SEVA route will be available at time of final plat. Applicant has not met the burden to satisfy RCW 58.17.110.

#### **Hearing Examiner Conditions Deny Public a Reasonable Opportunity to Review the SEVA Route.**

The court in *JZ Knight v. City of Yelm*, also recognized that the neighboring property owner must be afforded an opportunity to challenge the City’s evidence of water availability before final plat approval. *Id.* 17 Wn.2d at 345. The court specifically stated as follows:

Knight was entitled to clarification of the City Council’s decision and an opportunity to challenge the City’s evidence of water provisions *before final plat approval*, and that is exactly what the Superior Court provided when it stated that all requirements must be satisfied and confirmed in writing before final plat approval, when it provided Knight notice of any final plat approval proceedings, and when it remanded to the City Council for modification.

*Id.* 173 Wn.2d at 345. Friends of Country Ridge and the public are entitled to notification and a participatory opportunity in the review of any proposed SEVA route. Hearing Examiner’s Decision denies this opportunity and places sole responsibility for such determination upon City Fire Marshal. This is inconsistent with the holding in *JZ Knight* as well as the requirements of RCW 58.17.110. We request reconsideration of this portion of the land use decision.

Hearing Examiner appears to have extended sole review responsibility with respect to location to the Richland Fire Marshal. That process does not include an opportunity for the public to address the selected location and requirements. Hearing Examiner does make a finding, however, that seems to suggest a process for public review.

In discussing review of final SEVA route options, Hearing Examiner made the following finding:

34. The Examiner notes that an access/connection point from the west, towards Dallas Road, instead of via Strawberry Lane to the east, may present itself before the time of final plat approval – which could be up to five years away – *and that such change could be deemed a revision to this preliminary plat approval, triggering a Type I permit approval as a Minor Revision to this preliminary plat (See RMC 19.20.010(A)(5)), or a Type III permit approval as a Major Revision to this preliminary plat (See RMC 19.20.010(C)(1)).*

*Finding 34.* This finding recognizes that the subsequent identification and location of a SEVA route would be processed as a preliminary plat amendment subject to either Type I or Type III review processes under RMC 19.20.010(A)(5) or (C)(1). This review condition is consistent with the holding in *JZ Knight v. City of Yelm*.

Hearing Examiner's conditions, however, do not allow or provide the public an opportunity to challenge the SEVA route selection. *Condition 54* specifically provides that "...[a]ny proposed SEVA route shall be subject to review and approval by the Richland Fire Marshal." The condition goes on to provide that "...[r]evisions to this Condition of Approval or the proposed plat that would eliminate the need for a SEVA to serve the new plat shall require either a Type I Permit under RMC 19.20.010(A)(5) or (12); or a Type III Permit under RMC 19.20.010(C), as determined by the Planning Manager under authority granted in RMC 19.20.020." The public participatory right is allowed *only* where a SEVA route is eliminated and replaced with another alternative.

Hearing Examiner has eliminated any notification or public review process for an unknown future SEVA route. This is contrary to the court's holding in *JZ Knight v. City of Yelm* that a neighboring and impacted landowner must be provided "...an opportunity to challenge the City's evidence of water provisions before final plat approval, ....". *Id.* 173 Wn.2d at 345.

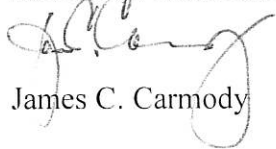
If review of a required SEVA route is deferred to a later time, the review should be through a public process consistent with the review standards for preliminary plats. Hearing Examiner has contemplated Type III review processes related to plat amendments and that procedure would afford the appropriate notification, opportunity to participate and decision making process as required for a preliminary plat approval. It is incongruous to insert a nonpublic review procedure for a critical component of a preliminary plat that requires a hearing examiner determination at time of preliminary plat.

### **Conclusion**

We appreciate the Hearing Examiner's reconsideration of his decision, findings and conditions. We ask the Hearing Examiner deny the preliminary plat application because the applicant has failed to provide evidence "...supporting a reasonable expectation ..." that a SEVA route is available to serve the proposed plat. If the Hearing Examiner determines that the standards of RCW 58.17.110 have been satisfied in the absence of any evidence regarding reasonable available SEVA routes, we ask that the conditions of approval be reconsidered and that any future proposed SEVA route be reviewed and processes through a Type III permit process for preliminary plat amendments.

Thank you for your consideration.

Very truly yours,  
MEYER, FLUEGGE & TENNEY, P.S.



James C. Carnody

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All Parties of Record (as indicated on the Certificate of Service)