

August 12, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Blue Fern Development LLC file no. **PLAT180006**
Proposed ordinance no.: **2019-0315**

SALMON CREEK TOWNHOMES

Preliminary Plat Application

Location: West Side of 14th Ave SW, White Center Area

King County: Department of Local Services
represented by **Kevin LeClair**
35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-2717
Email: kevin.leclair@kingcounty.gov

Applicant: Blue Fern Development LLC
represented by **Jordan Salisbury**
11232 120th Avenue NE, Suite 204
Kirkland, WA 98033
Telephone: (425) 629-3854
Email: jordan@bluefern.com

SUMMARY OF RECOMMENDATIONS/DECISION:

| | |
|--|-------------------------------|
| Department's Preliminary Recommendation: | Approve Subject to Conditions |
| Department's Final Recommendation: | Approve Subject to Conditions |
| Examiner's Decision: | Approve Subject to Conditions |

EXAMINER PROCEEDINGS:

Hearing Opened: August 8, 2019
 Hearing Closed: August 8, 2019

The attached minutes identify public hearing participants and exhibits. A hearing recording is available through the Hearing Examiner’s Office.

FINDINGS:

1. General Information:

| | |
|------------------------------|---|
| Application Date: | April 6, 2018 |
| Application Deemed Complete: | May 4, 2018 |
| Applicant: | Blue Fern Development, LLC Jordan Salisbury 11232 120th Avenue NE, Suite 204 Kirkland, WA 98033 |
| Engineer: | ESM Consulting Engineers, LLC Peter D. Gonzales, PE 33400 8th Avenue S., Suite 205 Federal Way, WA 98003 |
| STR: | 06-23-04 |
| Location: | West Side of 14th Ave. SW in the White Center area. Parcel No. 345100-0470. |
| Postal City: | Seattle |
| Zoning: | R-24 |
| Acreage: | .55 |
| Number of Lots: | 12 |
| Density: | 21.8 dwelling units per acre |
| Average Lot Size: | 1,160 square feet |
| Proposed Use: | Fee Simple Townhome Dwellings |
| Sewage Disposal: | SW Suburban Sewer District |
| Water Supply: | Seattle Public Utilities |
| Fire District: | North Highline, King County Fire District #11 |
| School District: | Highline School District #401 |

2. At the hearing, the Department of Local Services, Permitting Division ("Permitting"), through Mr. LeClair, summarized the proposal. The Applicant, through Mr. Gonzales,

- provided added detail, with counsel providing legal clarifications. No one from the public wished to testify.
3. Various state and local agencies reviewed the project. No concerns which could not be addressed were identified.¹
 4. State Environmental Policy Act, Ch. 43.21C RCW review was completed through a Determination of Non-Significance, which was not appealed.²
 5. The site is surrounded by R-6, R-24, and R-48 zoning, with single and multi-family residential development. The 12 lots meet KCC minimum and maximum density requirements, as the Staff Report details.³
 6. There are no critical areas on site or in the immediate vicinity. No threatened, endangered or protected wildlife are mapped by County GIS or WDFW as on site.⁴
 7. As the site sits higher than adjacent properties, surface water run-off to it is minimal.⁵ The plat will be constructed to meet KCC stormwater management requirements.
 8. Required urban services and facilities will be provided. These improvements mitigate project impacts, meet code requirements, and ensure adequate ingress and egress.
 9. The 14th Avenue SW frontage will be improved, at minimum, to the urban neighborhood collector standard.⁶ A private minor access roadway (Road A) on the site's north side will be constructed with half street improvements, with curb, gutter and a five-foot sidewalk. A private access tract will serve lots 11 and 12 on the site's west side. A hammerhead turnaround is proposed in the site's middle. County engineering has reviewed the proposal.⁷
 10. The Applicant demonstrated that fire safety, sewage and water supply requirements can be met.⁸ To address school impacts, impact fees will be paid, and school access was documented as adequate.⁹ Recreation space requirements are addressed through a developer-proposed fee-in-lieu, instead of providing 170 square feet per unit on site. As the Applicant addressed at the hearing, the County approved this approach for providing necessary recreation space.¹⁰

¹ Exhibit 2 (Staff Report), pg. 2.

² Exhibit 2 (Staff Report), pg. 2.

³ Exhibit 2 (Staff Report), pgs. 4-5.

⁴ Exhibit 2 (Staff Report), pg. 3.

⁵ Exhibit 2 (Staff Report), pgs. 3 and 5; Exhibits 8 and 9.

⁶ Exhibit 2 (Staff Report), pg. 5.

⁷ Exhibit 2 (Staff Report), pg. 5; Exhibit 16.

⁸ Exhibits 13 and 14 (certificates of water and sewer availability; fire flow was found sufficient); Exhibit 2 (Staff Report), pg. 7.

⁹ Exhibit 2 (Staff Report), pg. 7; *see also* Exhibits 11 and 20.

¹⁰ *See* Exhibit 2 (Staff Report), pg. 7; Exhibit 19; KCC 21A.18.185.

11. Except as modified by this Decision, the Staff Report¹¹ is incorporated by reference. The Staff Report includes recommended conditions. They should be included to support Decision findings and ensure KCC requirements are met, without substantive revision excepting the two revisions the Applicant requested at the hearing. One revision is a clarification to Condition 10(c) to reflect County approval of the recreational fee-in-lieu mitigation approach. The other revision is replacement language for Condition 13 to address Ecology’s comment related to the area's Asarco history.¹² Planning did not object to the requested revisions.

CONCLUSIONS:

1. A preliminary plat cannot be approved unless:
 - A. Appropriate provisions are made for the public health, safety and general welfare and for such 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 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; and
 - B. The public use and interest will be served by platting the subdivision and dedication.¹³
2. These criteria are met. The proposed subdivision, as conditioned below, would conform to land use controls. The use, density, and scale of the project are permitted in the R-24 zone, and the project is supported with adequate infrastructure, street improvements (including sidewalks and parking), school impact fees, recreational space mitigation, and other measures, to ensure the project meets KCC requirements.
3. If approved subject to the below conditions, the subdivision adequately addresses the issues identified in RCW 58.17.110 and KCC 20.22.180, and will serve the public health, safety and welfare, and the public use and interest.
4. The below conditions for final plat approval are reasonable and serve the public interest.

DECISION:

Preliminary Plat Salmon Creek Townhomes is approved subject to these conditions:

1. Compliance with all platting provisions of Title 19A of the King County Code.

¹¹ Exhibit 2.

¹² Exhibit 21; Applicant/DCD hearing testimony.

¹³ KCC 20.22.180.

2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the density requirements of the R-24 zone classifications. All lots shall meet the minimum dimensional requirements of the R-24 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at Permitting's discretion in accordance with KCC 19A.12.030.

4. All construction and upgrading of public and private roads shall be done in accordance with the 2016 KCRDCS established and adopted by Ordinance 18420, as amended.

5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.

6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the 2016 King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.

a. Drainage plans and analysis shall comply with the KCSWDM and applicable updates adopted by King County. DLS - Permitting approval of the drainage and roadway plans is required prior to any construction.

b. Current standard plan notes and ESC notes, as established by DLS - PERMITTING Engineering Review, shall be shown on the engineering plans.

c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # (DLS – Permitting-issued plan record number to be inserted in space provided) on file with DLS - Permitting and/or the King County Road Services Division. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

d. The drainage facilities shall meet the requirements of the KCSWDM. The site is subject to the Basic Flow Control and Enhanced Basic Water Quality requirements in the KCSWDM. Level 1 Flow Control is required for the on-site basin.

e. The detention vault shall meet the design requirements in Section 5.1.3 of the KCSWDM. The two-facility treatment train and wetvault shall be designed accordingly per Sections 6.1.2 and 6.4.2 of the KCSWDM.

f. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Section 1.2.9 of the 2016 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMPs for site development.

The required BMPs shall also be shown on the individual residential building permit applications upon submittal of the permits. The individual building permit applications shall also include the required covenants, easements, notes and other details to implement the BMP design.

7. The proposed subdivision shall comply with the 2016 KCRDCS, including the following requirements:

a. **14th AVE SW FRONTAGE:** Provide frontage improvements consistent with an Urban Neighborhood Collector along 14th Ave SW adjacent to the property. Dedicate 8' of right of way to accommodate this road section. Then construct concrete vertical curb, gutter, and sidewalk. The sidewalk shall be at a minimum 6.5' wide per Section 3.02 of the KCRDCS. The pavement widening shall meet the overlay provisions of Section 4.03 of the KCRDCS. This road section shall be provided along the entire east boundary of the site before tapering back to match the existing pavement.

b. **TRACT B "ROAD A" MINOR ACCESS ROAD:** Provide half street improvements in TRACT B ROAD A as a minor access roadway. This includes creation of a 27' wide tract through the site, including construction of 20' paved travel-way with rolled curb and 5' wide sidewalks on one side.

c. **TRACT A JOINT USE DRIVEWAY:** Provide improvement necessary for Tracts A to function as a joint use driveway per Section 2.09 (B) of the KCRDCS.

d. Prior to final plat recording, KCRDCS roadway improvements shall be provided to serve the new lots

e. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.13 of the KCRDCS.

8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.

9. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

10. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).

a. A detailed recreation space plan (i.e. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DLS - PERMITTING concurrent with the submittal of the engineering plan.

b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

c. In accordance with KCC 21A.18.185, the developer may choose to pay a fee-in-lieu of providing the on-site recreation space. The Department of Parks and Natural Resources has agreed to accept the fee-in-lieu payment. In order to obtain final plat approval, the developer shall provide payment of an amount agreed upon by the Department of Natural Resources and Parks, based on an estimate of the market value of the required recreation land area after development.

11. A homeowners' association or other workable organization shall be established to the satisfaction of DLS - PERMITTING which provides for the ownership and continued maintenance of any the access, stormwater facilities, recreation, open space and/or critical area tract(s).

12. Street trees shall be provided as follows (per KCRDCS 5.03 and KCC 21A.16.050):

a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.

b. Trees shall be located within the street right-of-way and planted in accordance with Section 5.03 and Drawings 5-009 through 5-013 of the KCRDCS, unless the King County Department of Local Services, Roads Division determines that trees should not be located in the street right-of-way.

c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.

d. The trees shall be owned and maintained by the abutting lot owners or the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.

e. The species of trees shall be approved by DLS - PERMITTING if located within the right-of-way, and shall comply with KCRDCS 5.03L, M, and N. They shall not include species the County determines has the potential to disrupt utilities or impact roadway improvements. All tree planting in the right-of-way shall include the installation of an approved root barrier adjacent to walks and curbs for each tree, unless otherwise approved by the County Road Engineer.

f. The applicant shall submit a street tree plan and bond quantity worksheet for review and approval by DLS - PERMITTING prior to engineering plan approval.

g. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted and held for one year. After one year, the maintenance bond may be released after DLS - PERMITTING has completed a second inspection and determined that the trees have been kept healthy and thriving.

h. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

13. Due to potential soil contamination from the Asarco smelter and as a result of comments from the Department of Ecology (Exhibit 20), the applicant, prior to site development approval, shall sample the soil and analyze for arsenic and lead following the 2012 Tacoma Smelter Plume Guidance. The soil sampling results shall be sent to Ecology for review. The results and further actions by applicant shall be consistent with the Model Toxics Control Act cleanup levels and process as provided for in Chapter 173-340 WAC and further protocols issued by Department of Ecology, including any requirements for notification, further testing, remediation, or other precautions.

DATED August 12, 2019.



Susan Drummond
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

A person appeals this Examiner decision by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s decision.

Prior to the close of business (4:30 p.m.) on *September 5, 2019*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *September 5, 2019*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *September 5, 2019*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

MINUTES OF THE AUGUST 8, 2019, HEARING ON PRELIMINARY PLAT APPLICATION SALMON CREEK TOWNHOMES, DEPARTMENT OF LOCAL SERVICES FILE NO. PLAT180006, PROPOSED ORDINANCE NO. 2019-0315

The Hearing Examiner was Ms. Drummond. Hearing participants were Mr. LeClair, Mr. Gonzales, and Ms. Koloušková. These exhibits were offered and admitted:

- | | |
|----------------|---|
| Exhibit no. 1 | Department of Local Services file no. PLAT180006 |
| Exhibit no. 2 | Preliminary department report, transmitted to the Examiner on July 25, 2019 |
| Exhibit no. 3 | Land use permit application, received April 6, 2018 |
| Exhibit no. 4 | State Environmental Policy Act (SEPA) checklist, submitted April 6, 2018 |
| Exhibit no. 5 | SEPA determination of non-significance, issued July 8, 2019 |
| Exhibit no. 6 | Affidavit of posting notice of plat application, posted on May 16, 2018 |
| Exhibit no. 7 | Notice of application, mailed on May 18, 2018 |
| Exhibit no. 8 | Revised Preliminary plat map and Conceptual Road, Utilities, and Grading Plans, dated March 19, 2019 and March 27, 2019 |
| Exhibit no. 9 | Revised Technical Information and Level 1 Downstream Analysis Report, received March 19, 2019 |
| Exhibit no. 10 | Subdivision Density and Dimension Calculations Worksheet, received April 6, 2018 |
| Exhibit no. 11 | School walkway analysis, received April 6, 2018 |
| Exhibit no. 12 | ALTA Commitment for Title Insurance, received April 6, 2018 |
| Exhibit no. 13 | Certificate of Water Availability, by Seattle Public Utilities, received April 6, 2018 |
| Exhibit no. 14 | Certificate of Sewer Availability, by Southwest Suburban Sewer District, received April 6, 2018 |
| Exhibit no. 15 | Fire District Receipt, received April 6, 2018 |
| Exhibit no. 16 | Road Design and Construction Standards Variance, approved April 11, 2019 |
| Exhibit no. 17 | Surface Water Design Manual Adjustment, approved February 22, 2019 |
| Exhibit no. 18 | Email, SEPA comment from Eva Barber, Washington State Department of Ecology, received July 10, 2019 |
| Exhibit no. 19 | Email, public comment from Department of Natural Resources and Parks, from, received on August 7, 2019 |
| Exhibit no. 20 | School walkways, from Pete Gonzales, submitted August 8, 2019 |
| Exhibit no. 21 | Revision to Condition 13, submitted August 8, 2019 |

SD/jo

August 12, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Blue Fern Development LLC file no. **PLAT180006**
Proposed ordinance no.: **2019-0315**

SALMON CREEK TOWNHOMES

Preliminary Plat Application

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.
- placed via County INTEROFFICE MAIL to County staff to addresses on record.

DATED August 12, 2019.



Jessica Oscoy
Legislative Secretary

Archuleta, Wally

Department of Local Services

Branley, Michelle

Hardcopy

Carlson, Joanne

Department of Local Services

Eichelsdoerfer, Robert

Department of Local Services

Goll, Shirley

Department of Local Services

Gonzales, Pete

ESM Consulting Engineers LLC

Hardcopy

Graves, John

Blue Fern Development LLC

Hardcopy

Kolousková, Duana

Johns Monroe Mitsunaga Kolousková

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Laville, Laura

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LeClair, Kevin

Department of Local Services

Nagorski, Savanna

ESM Consulting Engineers LLC

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Pedroza, Melani

Metropolitan King County Council

Salisbury, Jordan

Hardcopy

Sung, Huey-yi

Department of Local Services

Vogler, Christi

Department of Local Services