

1 BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

2 IN RE:) HEARING NO. 13-0094
3 WOODBURY CROSSING REPLAT.) FINDINGS OF FACT,
4) CONCLUSIONS OF LAW,
5) DECISION AND RECOMMENDATION
6) TO CITY COUNCIL

7 **APPLICANT:** Lennar Northwest, Inc. ("Lennar")
8 12815 Canyon Road East, Suite F
9 Puyallup, Washington 98372

10 **REPRESENTATIVES:**

11 Chris Ferko
12 Barghausen Consulting Engineers, Inc.
13 18215 72nd Avenue South
14 Kent, Washington 98032

15 Eric Molina
16 Lennar Northwest, Inc.
17 12816 Canyon Road East, Suite F
18 Puyallup, Washington 98372

19 **SUMMARY OF REQUEST:**

- 20 1. Replatting of Woodbury Crossing Phase I to convert Lots 67 and 74 to zero lot detached
21 single-family units (instead of two-unit townhouses).
22
23 2. Increase the width of Lot 74 from 35.55 feet to 40 feet and decrease the width of Lot 73
24 by 4.445 feet to 30.99 feet.
25
26 3. Relocate all shared wall lines on Lots 67 through 74 to reflect the correct location of
27 constructed townhouses.
28
29 4. Convert future Phase II Lots 122 and 123 from single-family detached units to an
30 attached single-family unit (i.e., a two-unit townhouse.)

31 **PROJECT LOCATION:**

32 The "Woodbury Crossing" Development is located south of the 4500 Block of Mud Bay Road
33 and west of Kaiser Road. Lots 67 through 74 are located along the south side of Greenwood
34 Drive S.W. where it intersects with Cherrywood Drive S.W.; Lots 122 and 123 are located at the
35 northwest intersection of Rosewood Drive S.W. and 4th Way S.W.

36 **SUMMARY OF DECISION:**

37 The proposed replat is **approved** subject to the conditions recommended by City Staff. The
38 Hearing Examiner further recommends to the City Council that it also approve the requested
39 replat subject to the same conditions.

40 *Findings of Fact, Conclusions of Law, Decision and
41 Recommendation to City Council - 1*

CITY OF OLYMPIA HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-9533

1 **BACKGROUND**

2 Lennar Northwest, Inc. ("Lennar"), the current owner of the Woodbury Crossing
3 Development, requests the replatting of Phase I to accommodate an error in the location of three
4 recently constructed two-unit townhouses. These three townhouses were constructed one lot
5 over from their intended location. This results in two "orphan" lots, Lots 67 and 74, that are now
6 incapable of being developed as townhouse sites. Lennar asks to convert these two end lots into
7 "zero lot attached single-family units" so that they can be put to use. As part of this proposal Lot
8 74 must be widened by 4.45 feet to achieve the minimum lot width of 40 feet - the minimum
9 width required for a detached single-family residence. Lot 73 would be reduced in width by a
10 like amount.

11 In return for being allowed to convert Lots 67 and 74 into zero lot detached single-family
12 units, the Applicant would convert two existing zero lot detached single-family units located in
13 Phase II (Lots 122 and 123) into a two-unit townhouse. To state all of this slightly differently,
14 Lots 67 and 74 would be converted from townhouse lots to single home lots and in return Lots
15 122 and 123 in Phase II would be converted from single home lots to a townhouse lot, with the
16 net result being the same number of single home lots and townhouse lots as required under the
17 current Master Plan.

18 Separately, Phase I needs to be replatted to reflect the true locations of the shared wall
19 lines between the three constructed two-unit townhouses on Lots 68-73.

20 Woodbury Crossing has a long and somewhat complicated history. The concept for the
21 development was first introduced in 2004 when the site was within Thurston County jurisdiction.
22 As the application progressed City Staff began to assume responsibility for its review. County
23 approval for the development was given in 2006. In 2007 the site was annexed into the City. In
24 2009 the City Council approved the Woodbury Crossing Master Plan, and Phase I was approved
25

1 at the same time. In 2012 the Master Plan was amended to allow for three phases instead of the
2 original two. Along the way ownership of the development has changed hands several times.

3 The current request arises from an embarrassing mistake by the developer's field survey
4 team. Phase I requires the construction of four two-unit townhouses on Lots 67 through 74 along
5 the south side of Greenwood Drive S.W. near its intersection with Kaiser Road S.W. The field
6 surveyors mislocated the first of these townhouses by one lot. Three townhouses have been
7 constructed on Lots 68 through 73, leaving vacant the end lots, 67 and 74. As individual lots
8 they are incapable of being used for two-unit townhouses, and they are not allowed to be used as
9 single home lots unless the Phase I plat is amended. And, Lot 74 remains unusable as a single
10 home lot unless it is widened by 4.45 feet to meet the minimum width requirement of 40 feet.
11 The developer understands that if it is to be allowed two additional single home lots in Phase I it
12 must convert two single home lots into a townhouse unit somewhere else in the development.
13 The developer therefore proposes to convert Lots 122 and 123, both single home lots in Phase II
14 and located at the northwest corner of Rosewood Drive and 4th Way S.W., into a two-unit
15 townhouse (Phase II has not yet received preliminary plat approval nor has it been recorded).

16 PUBLIC HEARING

17 The public hearing on this request commenced at 6:30 p.m. on October 14, 2013, in the
18 Planning Hearing Room in the City Hall. The City appeared through Steve Friddle, Senior
19 Planner. Lennar appeared through its Planner, Chris Ferko, of Barghausen Consulting
20 Engineers, Inc. Testimony was received from the City through Mr. Friddle. Testimony from the
21 Applicant was received from Mr. Ferko. A verbatim recording was made of the public hearing
22 and all testimony was taken under oath. No new exhibits were introduced during the hearing.

23 Mr. Friddle provided a brief history of the project as a whole and of the specific current
24 request. Mr. Friddle noted that the requested amendments arise from a fielding error and are not
25 intended to gain a special benefit or otherwise alter the requirements of the approved Master

1 Plan. Mr. Friddle also noted that, if approved, the amendments will allow for the same number
2 of single home lots and townhouse units as originally required in the Master Plan, but in
3 somewhat different locations. Mr. Friddle added that if Lot 74 is to be converted to a single
4 home lot it must be widened 4.45 feet to meet minimum lot widths for single home lots. The
5 required footage will be carved out of the adjoining Lot 73. This will not impair the setback or
6 lot width requirements of Lot 73. Mr. Friddle concluded his presentation by confirming that the
7 City Staff recommends approval of the recommended changes to Phase I subject to the
8 conditions set forth in the Staff Report.

9 Chris Ferko, the Applicant's Planner, then spoke on behalf of Lennar. Mr. Ferko
10 explained that the requested modification arises out of an error in the field surveying leading to
11 the improper location of the constructed townhouses. Mr. Ferko stated that the request was not
12 motivated by any desire to switch the location of single homes and townhouses and, in fact, this
13 error will result in greater expenses and smaller revenues than if the townhouses had been
14 correctly located. Mr. Ferko confirmed that the Applicant has no objection to the conditions
15 recommended by City Staff for approval.

16 Following Mr. Ferko's presentation the hearing was opened for public comment. There
17 were approximately ten members of the public present, all of whom were opposed to the request.
18 Those giving testimony were Jane and Ira Feuer, 548 Cherrywood Drive S.W.; Ronald Bernard,
19 531 Beachwood Court S.W.; Karla Heinitz, 528 Cherrywood Drive S.W.; and Sarah and Jeff
20 Pearson, 532 Cherrywood Drive S.W. Although each of these individuals offered a slightly
21 different perspective their testimony followed a consistent theme. Each of these individuals
22 resides in "Woodbury Estates" (sometimes referred to "Kaiser Estates"). Woodbury Estates is
23 adjacent to Woodbury Crossing and is just a few lots north of the townhouse Lots 67-74 that are
24 the subject of this application. Each of the witnesses considers the Woodbury Estates
25 Development to be one and the same as Woodbury Crossing. In fact, the two developments not

1 only share a similar name but also share a common homeowner's association and are both
2 currently owned by Lennar. All of these witnesses were very surprised to learn that their
3 development is not actually part of the Woodbury Crossing Master Plan as, again, their
4 neighborhood is indistinguishable from the surrounding Woodbury Crossing Development and
5 shares common management.

6 Woodbury Estates was designed and approved as a County project, not a City project. It
7 is laid out on larger lots and with higher quality residences. The witnesses who reside there are
8 proud of their neighborhood and wish to protect it from lesser quality construction and from
9 adjoining residences with potentially lessened pride of ownership.

10 The witnesses express frustration over the many changes in ownership of these
11 developments, and of the unkept promises of the developers. They explained that at the time
12 they purchased their residences a high standard of quality was promised to be maintained
13 throughout the neighborhood and that multi-family dwellings would generally be kept to the
14 west side of the development. They feel that the residences recently constructed by Lennar do
15 not live up to the promises of earlier developers and that the value of their homes is at risk.

16 These witnesses also note that the field surveying errors were realized early during
17 construction and could have easily been resolved. They fear that if the plat amendments are
18 approved the resulting two new single homes will be out of character with the adjoining
19 townhouses; will be unattractive; and will be difficult to site on such narrow lots.

20 All of the witnesses concurred that, given that the problem is a self-inflicted one, the
21 developer should instead be required to convert Lots 67 and 74 into additional open space. They
22 note that Lot 67 could be used to expand the existing greenbelt located immediately across the
23 street on the north side of Greenwood Drive S.W.

24 It is easy to understand why these residents of Woodbury Estates regard their
25 development to be the same as Woodbury Crossing, and why any changes to Woodbury

1 Crossing would be considered a threat to their neighborhood and their property values. After
2 careful consideration of all of their concerns, however, I am not persuaded by their suggestion
3 that Lots 67 and 74 should be converted into additional open space. Although I agree that the
4 surveying error is a self-inflicted problem, I do not believe that it should result in the lost use of
5 these two lots especially when their conversion to single home lots can be easily balanced by the
6 like conversion of single home Lots 122 and 123 into a townhouse. I also do not agree with the
7 neighbors' belief that construction of single homes on Lots 67 and 74 will be out of character
8 with nearby properties or injurious to property values. Single homes and townhouses frequently
9 adjoin each other in this development without any disruption to the development's scheme.

10 To summarize, although the surveying error causing this request was a surprising one, it
11 was also an innocent error and was not intended to benefit the developer. The error has a simple
12 and straightforward remedy: the conversion of the two end lots into single home lots and the
13 offsetting conversion of single Lots 122 and 123 into a townhouse unit. In this manner the
14 requirements - and goals - of the Woodbury Master Plan remain fulfilled.

15 Accordingly, I make the following:

16 **FINDINGS OF FACT**

17 1. Any Findings of Fact contained in the foregoing Background section are
18 incorporated herein by reference and adopted by the Hearing Examiner as his Findings of Fact.

19 2. The Applicant, Lennar Northwest, Inc., requests a replat of Woodbury Crossing
20 Phase I recorded Plat Map to: (a) convert Phase I Lots 67 and 74 to zero lot detached single-
21 family lots (from their existing status as two-unit townhouse lots), (2) increase the width of Lot
22 74 from 35.55 feet to 40 feet, and decrease Lot 73 by the same amount to a width of 30.99 feet,
23 (c) relocate the shared wall lines on Lots 67-74 to reflect the true locations of the constructed
24 townhouse units on Lots 69-73, and (d) convert future Phase II Lots 122 and 123 from single-
25 family detached lots to attached single-family lots (a two-unit townhouse).

1 3. Pursuant to the State Environmental Policy Act, a Mitigated Determination of
2 Non-Significance (MDNS) was issued on November 25, 2005, as a component of original
3 project review for Woodbury Crossing. Further environmental review is not required for this
4 proposed amendment.

5 4. Notification of public hearing was mailed to the parties of record, property
6 owners within 300 feet, and recognized neighborhood associations, posted on the site and
7 published in The Olympian in conformance with Olympia Municipal Code 18.78.020.

8 5. The Staff Report, Pages 2 and 3, provide a history of the Woodbury Crossing
9 Master Plan Development and of the circumstances that led to the requested modifications. The
10 Hearing Examiner has reviewed those Findings and adopts them by reference.

11 6. The lots affected by the proposed modifications are currently held in one
12 ownership, however, if one or more affected lots are sold the final plat map must include
13 signatures of all property owners within the plat whose lot boundaries are altered or affected by
14 the replat. A title report or plat certificate, showing the names of all persons with a real of
15 possessory interest in the plat whose lot boundaries would be affected by the replat and any
16 restrictions encumbering the land, shall be submitted with the final plat map.

17 7. The proposed replat does not involve or require the relocation, removal or
18 reconstruction of existing plat improvements or open space.

19 8. If the replat is approved the Applicant will need to meet the conditions imposed
20 by the Hearing Examiner prior to submittal of final approval to the City Council, and then
21 recording with the Thurston County Auditor's Office.

22 9. The proposed amendments do not alter any streets or parts of streets.

23 10. The requested amendments will ensure compliance with the unit mix contained in
24 the approved Master Plan and will meet all setback requirements of OMC 18.05.080, Table 5.05,
25 Residential Development Standards.

1 11. The Woodbury Crossing Master Plan requires a specific mix of housing types
2 (triples, duplex, attached townhomes and zero lot line and standard lots) as set forth in the Tables
3 included in Attachments 4 and 5 of the Master Plan. There are to be 221 zero lot line detached
4 single-family units and 18 attached single-family townhome units. The proposed amendments
5 will not alter the total number of zero lot line units or attached single-family townhome units,
6 that is, if the amendments are approved there will continue to be 221 zero lot line detached
7 single-family units and 18 attached single-family townhome units.

8 12. Attached townhomes as originally proposed for Lots 67 and 74 can no longer be
9 constructed due to a surveying error. The Applicant's proposal to convert these two end lots to
10 zero lot line detached single-family units, and to convert to similar units in Phase II (Lots 122
11 and 123) into an attached single-family townhome unit, is consistent with the Master Plan
12 residential unit count.

13 13. The requested replat proposal will require several revisions to notations in the
14 Woodbury Crossing Master Plan, including attached sheets as set forth more fully at Page 5 of
15 the Staff Report.

16 14. The proposed modifications are consistent with the development standards for
17 Neighborhood Villages Zoning, OMC 18.05, and will meet all minimum lot sizes as required.

18 15. The proposed modifications are consistent with the standards for Master Plan
19 Development, MPD Chapter 18.57, and with Ordinance 6299 (OMC 18.05.140).

20 16. City Staff recommends approval of the proposed amendments subject to the
21 following conditions:

22 A. If one or more lots are sold, the final plat map shall include signatures of
23 all property owners with the plat whose lot boundaries would be altered or affected by the replat.
24 A title report of plat certificate, showing the names of all persons with a real or possessory
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1 interest in the plat whose lot boundaries would be affected by the replat and any restrictions
2 encumbering the land, shall be submitted with the Final plat map.

3 B. The Applicant shall submit an amended final plat map Sheet 11 of 13 for
4 city Council action that:

5 • Converts Phase I Lots 67 and 74 to zero lot detached single-family (from
6 existing two-unit townhouse); by increasing Lot 74 width from 35.55 feet to 40 feet and
7 decreasing Lot 73 width by 4.45 feet to ~~30.99~~ feet;

31.09

8 • Relocates shared wall lines on Lots 67-74 to reflect their correct locations;
9 and

10 • Revises the "Note" narration at the bottom of the sheet accordingly.

11 C. The Applicant shall submit an amended final plat map Sheet 4 of 11 for
12 City Council action that amends the notes and Restriction #11 to accurately reflect the
13 amendments on Sheet 11 of 13.

14 D. Future Phase II Lots 122 and 123 shall be designated, platted and
15 constructed consistent with this Decision as Single-Family Townhouse attached.

16 17. The Applicant does not object to the City's proposed conditions of approval.

17 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

18 **CONCLUSIONS OF LAW**

19 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

20 2. The requirements of SEPA have been met.

21 3. Any Conclusions of Law contained in the foregoing Background Section or
22 foregoing Findings of Fact are hereby incorporated by reference and adopted by the Hearing
23 Examiner as Conclusions of Law.

24 4. The proposed replat must comply with OMC 17.16; OMC 17.28; OMC 18.05;
25 OMC 18.05.140 (Ordinance No. 6655); OMC 18.57; and OMC 18.82.

1 **SUBJECT TO the following conditions:**

2 A. If one or more lots are sold, the final plat map shall includes signatures of
3 all property owners with the plat whose lot boundaries would be altered or affected by the replat.
4 A title report of plat certificate, showing the names of all persons with a real or possessory
5 interest in the plat whose lot boundaries would be affected by the replat and any restrictions
6 encumbering the land, shall be submitted with the Final plat map.

7 B. The Applicant shall submit an amended final plat map Sheet 11 of 13 for
8 city Council action that:

9 • Converts Phase I Lots 67 and 74 to zero lot detached single-family (from
10 existing two-unit townhouse); by increasing Lot 74 width from 35.55 feet to 40 feet and
11 decreasing Lot 73 width by 4.45 feet to ~~30.99~~ feet;

12 • Relocates shared wall lines on Lots 67-74 to reflect their correct locations;
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14 • Revises the "Note" narration at the bottom of the sheet accordingly.

15 C. The Applicant shall submit an amended final plat map Sheet 4 of 11 for
16 City Council action that amends the notes and Restriction #11 to accurately reflect the
17 amendments on Sheet 11 of 13.

18 D. Future Phase II Lots 122 and 123 shall be designated, platted and
19 constructed consistent with this Decision as Single-Family Townhouse attached.

20 **RECOMMENDATION TO CITY COUNCIL**

21 The Hearing Examiner further recommends to the City Council that, upon the Applicant's
22 compliance with all conditions of approval, that the City Council approve final replat
23 modification.

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DATED this 22 day of OCTOBER, 2013.

Mark C. Scheibmeir
City of Olympia Hearing Examiner