OFFICE OF THE HEARING EXAMINER

CITY OF BUCKLEY

REPORT AND DECISION

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CASE NO.: **Site Plan Review SPR # 3151**

OWNER(S): CarbCom Properties LLC
10010-181st Avenue Court East
Bonney Lake, WA 98391

APPLICANT/ REPRESENTATIVE: B.C. Grimm
9524 East E Street
Tacoma, WA 98445

PLANNER: Kathy Thompson

SUMMARY OF REQUEST:

The applicant is requesting Site Plan Review of his proposal to construct three (3) separate metal buildings in order to operate a grow facility on the site located at 28484 and 28443 SR 410, Buckley, WA.

SUMMARY OF DECISION: Case continued. Record to remain open for the purposes of receiving additional information.

DATE OF DECISION: October 12, 2016

PUBLIC HEARING:

After reviewing the Planning Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on September 29, 2016, at 3:00 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "A" - Planning Department Staff Report
EXHIBIT "1" - Master Land Use Application
EXHIBIT "2" - Land Disturbing Activities Application
EXHIBIT "3" - Boundary Line Adjustment Application
EXHIBIT "4" - Design Review Application
EXHIBIT "5" - Title Insurance for TPN 0619047003
EXHIBIT "6" - Title Insurance for TPN 0619047002
EXHIBIT "7" - Title Insurance for Both Parcels
EXHIBIT "8" - Notice of Public Hearing
EXHIBIT "9" - Notice of Complete Application
EXHIBIT "10" - Notice of Incomplete Application
EXHIBIT "11" - SEPA Determination of Non-Significance (WSDOT)
EXHIBIT "12" - SEPA Checklist
EXHIBIT "13" - Geotechnical Analysis
EXHIBIT "14" - Wetland and Drainage Corridor Evaluation and Verification
EXHIBIT "15" - Traffic Impact Analysis
EXHIBIT "16" - Water/Sewer Availability Letters
EXHIBIT "17" - Letter from Bill Eastman dated June 6, 2016
EXHIBIT "18" - Letter from DOE
EXHIBIT "19" - Email from WSDOT
EXHIBIT "20" - Email from Pierce Transit
EXHIBIT "21" - Letter from DOE
EXHIBIT "22" - Letter from Health Department
EXHIBIT "23" - Response Email to Planner's Question
EXHIBIT "24" - Approved Land Disturbing Activities Permit
EXHIBIT "25" - Approved Design Review
EXHIBIT "26" - Phase 2 Parking Plan
EXHIBIT "27" - Construction Plans
EXHIBIT "28" - Generalized Landscape Plan
EXHIBIT "29" - Letter from Bill Eastman dated September 26, 2016
EXHIBIT "30" - Revised Staff Report

MINUTES

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

Exhibit A and 1-30 were admitted into evidence. Exhibit 30 was a new Staff Report submitted day of hearing.

Appearing was KATHY THOMPSON who stated that the applicant is proposing to construct three (3) metal buildings for purposes of growing marijuana on two (2) undeveloped parcels totaling 2.3 acres. These buildings will be agricultural in nature, one-story. The façade of the buildings is designed with porches and windows, although the buildings are windowless, for purposes of maintaining an appropriate small town atmosphere. The applicant will construct the sidewalks. He received a right of way permit in April of 2015. He also received Land Disturbing Activities permit May 16, 2016. A boundary line adjustment was requested on May 16, 2016. The boundary line adjustment was to increase the possibility of construction this past summer and to remove the lot line and enable construction over the property line. This request was granted. A design review was requested for the application June 9, 2016, with a meeting on June 3, 2016. The design was approved with conditions.

An issue with this case is that the short plat which created these lots specifies building setbacks of 30 feet and lots that are residential in nature. A plat alteration is required to remove these requirements. These plat conditions were set out in the plat granted in 1980 by Pierce County. The property is currently zoned as General Commercial. Surrounding properties on three (3) sides are zoned general commercial and NMU to the north. The Comprehensive Plan designation of these sites is industrial and general commercial, I&GC. The parcels are rectangular in shape and as stated before were created under Short Plat recorded under the Pierce County jurisdiction in 1980. The site will have a substantial amount of fill and all storm drainage will be handled on site. She did receive a phone call from an unnamed person concerned about school district bus storage lot which is just a few lots away from the site. Their concern was that the smell of the marijuana will permeate the busses and they might retain this odor. All of the growth will occur within windowless buildings. They will have window frames and false porches on the front of the buildings to give the appearance of a more residential small town feeling. The 12 foot fence along part of the front will be used to hide the garbage disposal equipment. Landscaping needs to be worked on and will be completed prior to issuance of permits. There will be a total of three (3) commercial buildings. Two (2) will be 156 by 60 yielding 9,360 square feet and one (1) smaller building will be 48 X 24 or a total of 1,152 square feet. In addition, there will be two parking areas, one with 12 stalls and one with ten stalls. The site has no critical areas. As previously stated false windows will be installed along the porch and the ends of the building to give a pedestrian feel to the site. A sidewalk will be along SR 410. The applicant will provide a circular vehicle access around the existing and future buildings with parking in the front and parking in the rear of the lot. Vegetative screens will be installed against a single-family residence to the north with vegetative buffers in the parking lot against property lines and street trees against the highway. There will be a landscaped area between the sidewalk and the parking lot in front and there will be a landscaped area between the sidewalk and SR 410.

Appearing was DOMINIC MILLER, City Engineer, who works for Gray and Osborne. Drainage from the entire site will go into a stormwater drainage area which is adequate to contain all water on site. Water from this site will no longer drain onto adjacent sites and likewise water from adjacent sites will no longer drain on this site because of the fill being

placed onsite. Thus, owners of adjacent property may feel that there is water draining from this site on to theirs because of the volume of water which normally would drain onto these sites will not be able to drain on them once the site is completed. The general drainage is to the north. They have reviewed the recommended conditions and agree with Ms. Thompson's recommendations.

Appearing was BRIAN C. GRIMM, on behalf of the applicant. It was not until the date of this hearing that they had determined that they'd have to do a plat alteration. There is confusion because of language on the short plat which should not have been on the short plat, but was put there. As a result, a plat alteration should have been done before the site plan review request. It wasn't. He is therefore requesting that we keep the record open so that they can apply for a plat alteration once it's received, submit it to the Hearing Examiner, and have a site plan review decision rendered by the Examiner. After substantial discussion on these issues, the Examiner agreed to take this matter under advisement. The applicant agrees with all of the recommended conditions at this time.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 3:27 p.m.

NOTE: A complete record of this hearing is available in the office of the City of Buckley Planning Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, researched the issues, heard testimony and taken this matter under advisement.

2. Pursuant to the State Environmental Policy Act (SEPA) and Buckley Environmental Regulations, a determination of non-significance was made by the responsible official on July 20, 2016. Because the optional method was used, no comment period was required, and no appeals were filed.

3. The Public Hearing Notice and proposed description was published in the legal section of the Enumclaw Courier Herald, posted on City Bulletin Boards and mailed to all property owners within 300 feet of the site consistent with the provisions of Buckley Municipal Code.

4. The Staff Report with it's 29 Exhibits adequately sets out proposed Findings, Conclusions, and Recommendations and is hereby incorporated by reference as though fully set forth.

5. The applicant has a possessory interest in two (2) rectangular parcels of property located at 28484 and 28443 SR 410, Buckley, Washington. Parcel 7002 is 1.299 acres; and Parcel 7003 is 1.599 acres for a total of 2.89 acres or 99,743.69 square feet. These two parcels are generally flat with slight depression toward the north. The difference between the north and south elevations is approximately eight feet over 500 feet. Only grass and a few shrubs are on the site.

6. The applicant proposes to construct three (3) separate buildings on the above described site. Building 1 will be close to the street and will be approximately 1,152 square feet. Building 2 and Building 3 will be approximately 9,360 square feet and one of these will be behind the other. They will face SR 410. The second building will be sited sometime in the future depending on the success of the venture which is to construct grow buildings for the purposes of growing marijuana. These buildings will be metal and designed to provide a more small town appearance. The larger buildings will have porches and windows.

7. When the applicant submitted his application, his application was accompanied with a Wetland Report dated April 11, 2016, drafted by H&S Consulting and Mark Heckert. This report basically indicates no area on or adjacent to the property meets the definition of a wetland because of the site's drainage. A Geological Site Assessment dated March 26, 2016, performed by LeRoy Surveyors & Engineers, Matt Crowell, and Rex Humphrey was also submitted. This report indicated the area is stable for development. It further states recommendations for construction for consideration by the City Engineer. A traffic report performed by Heath & Associates was also accompanied the report. This report states that there will be roughly 63 trip movements per day associated with the site. And, a stormwater site plan dated April, 2016, performed by Leroy Surveyors & Engineers was included. It provided details for the City Engineer to consider with reference to stormwater control.

8. The Comprehensive Plan designates this site as being in the Industrial and General Commercial (I&GC) zone; it contemplates this area uses are to me more intense commercial, or auto-oriented businesses, and include light manufacturing, metal working, higher levels of noise, and possible use of hazardous materials. This district is not conducive to residential development (see page 10 of the 2015 Comprehensive Plan). The proposal appears to be consistent with the above definition. It is located on SR-405 which is a major through fare through the City and surrounding uses such as a school bus parking lot trend more towards the industrialization and highly used commercial areas.

9. The City of Buckley zoning code designates the area site as GC, General Commercial zone. The purpose of this zone is set out in Buckley Municipal Code Section 19.20.070. It provides that:

> The GC zone is intended to implement the policies of the Buckley Comprehensive Plan for areas designated for commercial development along primary motorized transportation routes. The primary purpose is to develop commercial properties oriented along primary transportation routes.

These buildings will be located on SR-405 which is a primary transportation route and the proposal is consistent with the intent of the basic definition of this zone.

10. The surrounding uses of this site are basically General Commercial on three sides and to the north is NMU Neighborhood Mixed Use. The Neighborhood Mixed Use zone is defined in Buckley Municipal Code 19.20.050 and as its name suggests the primary purpose is to allow development of small commercial businesses in residential neighborhoods and given the distinction between the two zones staff is recommending and the Examiner finds it appropriate that there be a proper buffer between the proposed use and the residential use to the north end of the site in order to provide separation between the two uses.

11. Site plan reviews are governed by Buckley Municipal Code 19.33.010. The intent of this section is to ensure that development meets the goals and provisions of the City's Comprehensive Plan and polices and applicable design standards, public works standards, and all ordinances of the City. The intent of the site plan review is to address all aspects of site design, including but not limited to building and open space layout, parks and trails, parking lot design, vehicle and pedestrian access, and provisions for safe and efficient access to and from the public street system for vehicles and pedestrians. Site plan review and approval is required prior to a use being established on a lot or the issuance of the building permit for any new commercial project...See Buckley Municipal Code 19.33.020.

12. The site plan criteria is set out in the Buckley Municipal Code 19.33.020. The criteria the Examiner must use is set out on pages 5, 6, 7, 8, 9, 10 and half of 11 of the Staff Report which contains not only the criteria, but the analysis performed by staff. Those pages are hereby incorporated by reference as though fully set forth. Based upon the criteria set therein and the findings of staff the Examiner does find that site plan project is consistent with the provisions of the Buckley Comprehensive Plan and the project meets the requirements and intent of the Buckley Municipal Code as presented on the date of the hearing.

Based upon those findings the Examiner will conclude:

<u>CONCLUSIONS</u>:

1. The Hearing Examiner has the jurisdiction to consider the application for site plan review.

2. As set out in the Staff Report at this time the application for site plan review could be granted if it met with conditions of approval which were agreed to by all parties that are set out as recommended conditions for site plan review once it has obtained a plat alteration. The agreed upon conditions are listed below:

    1. Conditions from the design review shall be conditions for this site plan review:
        a. Prior to final occupancy, landscaping shall be installed in a manner approved with the site plan review. In addition to the requirements of Chapter 19.29 BMC and prior to building permit application, the plan shall include the following:
            i. A barrier buffer is required to the north, next to a residence, and shall provide a visible barrier that is six feet tall and 20 feet deep.
            ii. Landscaping next to the south-facing buildings visible from the highway shall be provided. It should resemble a short hedge.
            iii. A variety of trees shall be offered and include 30 percent conifers.
            iv. The parking lot contains fewer than 20 spaces and is not required to shade half of its spaces within 10 years; however parking lot landscaping shall be shown to shade some of the stalls by placing trees within the southern landscape area.
            v. Street trees shall be reconsidered; the single species of vine maple is not preferable. A mixture of color, size, and/or shape is desired.
            iv. Hanging baskets (or some other form of device) shall be provided at the corners of each building that is facing another building (i.e. the small south building will have baskets on the north side that faces the larger building, but not necessarily on the south side).
        b. The appearance of windows shall be provided along the south-facing walls under the porch roof and on the east/west ends of the buildings.
        c. Prior to installation, the applicant shall request a sign permit that meets the requirements of BMC 19.30.
        d. List of approved materials:
            a. Siding and roofing: T-3 of the Taylor Metal Products line
            b. Roof color: "Sandstone," Taylor Metal Products, Standard ARMOR TECH Coatings
            c. Trim: "Glacier White," Taylor Metal Products, Standard ARMOR TECH Coatings
            d. Wainscot: "Hickory," Taylor Metal Products, Standard ARMOR TECH Coatings

e. Walls: "Desert Brown," 29ga by Valley Rolling
f. Garbage enclosure fence: slatting shall be green

2. In addition to the above landscaping conditions, preliminary landscape plans shall demonstrate compliance with the City of Buckley Municipal Code (BMC) and shall be submitted prior to building permit issuance for installation prior to final inspection in accordance with BMC 19.29.050 for the following:
   b. Design details of the barrier buffer on the north property line shall be in accordance with BMC 19.29.050 and 060(2).
   c. The details of the mixture of conifers and deciduous trees for each type of landscape buffer shall be in accordance with BMC 19.29.
   d. The street trees shall be selected from the city's approved list and submitted for review and approval.

3. The following locations shall be added to the plans:
   a. The proposed trash and recycle enclosure locations.
   b. The location of bike racks.
   c. Per City Minimum Street Design Standards, sidewalks along SR 410 (Major Arterial) shall be 8-feet wide. The sidewalk shall not meander.

4. Any proposed signs shall comply with BMC 19.30 Sign Code in effect at the time the application is made:
   a. The proposed location for future signs should be shown and labeled on the construction plans.
   b. Any proposed signs shall be situated in a manner so as not to adversely affect safety or corner vision.
   c. The site triangles should take in account the sign location.
   d. Prior to installation, a sign permit shall be applied for and approved by the city.

5. Construction shall conform to the details required by the city engineer.

6. A boundary line adjustment shall be completed prior to building permit issuance.

7. A plat amendment shall be performed prior to building permit issuance.

8. Engineer's Conditions:
   A. The Applicant shall comply with the requirements of the Washington State Department of Ecology National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with construction activity.

B. A City Right-Of-Way Permit, including applicable bonding requirements, will be required for any proposed construction within the existing SR 410 right-of-way.

C. The applicant shall prevent tracking of material onto city rights-of-way.

D. The applicant shall allow unscheduled, periodic inspection of the erosion control measures.

E. The applicant shall allow unscheduled, periodic inspection of the compaction and dewatering efforts.

F. Following construction and prior to final acceptance of this project, the applicant will be required to execute an Agreement for Inspection and Maintenance of Privately Maintained Storm Drainage Facilities. The Agreement should be provided after construction of the storm drainage system to reflect "as-built" conditions. A copy of the form of the agreement is included in the City Street Standards.

G. As-built drawings in accordance with Section 3.08 of the City Standards, which incorporate the Contractor's field markups, will be required to be submitted to the City 30 calendar days after completion of the work.

9. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.

10. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

Based upon the above findings and conclusions it is the Ordered that the Hearing Examiner will maintain jurisdiction over this case and leave the record open for further evidence until such time as the Hearing Examiner receives evidence about the proposed plat alteration. At which time the Examiner will consider the plat alteration and accompanying documentation.

ORDERED this 12th day of October, 2016.

TERRENCE F. McCARTHY
Deputy Hearing Examiner

TRANSMITTED this 12th day of October, 2016, to the following:

OWNER(S): CarbCom Properties LLC
10010-181st Avenue Court East
Bonney Lake, WA 98391

APPLICANT: B.C. Grimm
9524 East E Street
Tacoma, WA 98445

OTHERS:

Carol Walker
830 Ryan Road #11
Buckley, WA 98321

Scott Campbell
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Seattle, WA 98104

Rick Stevens
10010-181st Avenue Court East
Bonney Lake, WA 98391

Bill Eastman
P.O. Box 282
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Bill Eastman
13111 S.E. 258th Street
Kent, WA 98030

CITY OF BUCKLEY

CASE NO.: Site Plan Review SPR # 3151

20.01.260 Appeals.

(7) Judicial Appeal. BMC 20.01.030 identifies final decisions appealable to superior court (Hearing Examiner decision are identified as going to superior court). In lieu of superior court, some appeals of final decisions are required by state law to be filed in other forums. The appellant bears the responsibility of filing an appeal in the proper forum and no assurances are made as to the accuracy of the forums designated for appeal in Table 1, BMC 20.01.030.

(a) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

(b) Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.