



DATE: August 14, 2020

TO: Parties of Record

FROM: Amanda Smeller, City Planner

RE: Notice of Hearing Examiner Preliminary Plat Interpretation Request Decision

**NOTICE IS HEREBY GIVEN THAT** the City of Carnation Hearing Examiner issued a decision on the above referenced request which was brought to an online remote public hearing on July 29, 2020. The purpose of the hearing was to evaluate and receive public testimony regard the following permit application:

**Request:** Interpretation of construction vehicle access restrictions (if any) for home building in the Tolt Meadows II subdivision.

**File number:** LP 18-0001

**Applicant:** John Day Homes

**Location:** The subject property is located at 33323 NE 45<sup>th</sup> Street and identified as Assessor Parcel No. 152507-9041.

**Decision:** The City has shown that the January 31, 2019 decision approving the preliminary plat of Tolt Meadows II needs no interpretation, and therefore it will stand as written. The applicant's request for an interpretation of said decision that would restrict only those vehicles used in plat infrastructure construction to the 45<sup>th</sup> Street driveway is hereby denied. The preliminary plat decision incorporates the applicant's representation and proposal to utilize the 45<sup>th</sup> Street driveway as the exclusive access for vehicles used in home building for the Tolt Meadows II plat (exception Lot 8).

**DESCRIPTION**

The Applicant requested a preliminary plat interpretation for construction vehicle access restrictions (if any) for home building in the Tolt Meadows II subdivision.

The Hearing Examiner's Report and Decision is attached.

**Procedure for Reconsideration**

Reconsideration of a hearing body's decision shall be subject to the following:

- A. Any party of record may file, at their discretion, a written petition for reconsideration within ten calendar days following the date of the hearing body's written decision. The petition shall be filed with the city planner.

- B. The grounds for seeking reconsideration shall be limited to those listed in Section 15.10.090(A)(2).
- C. The petition for reconsideration must:
  - 1. Contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any;
  - 2. Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
  - 3. Describe the specific relief requested including the specific reasons for which relief is requested. Identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.
- D. The petition for reconsideration shall be deemed to have been denied if one of the actions specified in subsection E of this section, has not been taken within ten working days of the date the petition is timely commenced.
- E. The petition for reconsideration shall be disposed of in writing by the same hearing body that rendered the decision. The hearing body may at its discretion:
  - 1. Deny the petition; or
  - 2. Grant the petition and issue an amended decision; or
  - 3. Grant the petition and give all parties of record the opportunity to submit written comment. Notice of the hearing body's decision to grant the petition, together with a copy of the petition for reconsideration shall be mailed in accordance with Section 15.09.200 to all parties of record. Parties of record shall have ten working days from the date of the reconsideration notice to submit written comments.
- F. A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration.
- G. The hearing body may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

PLEASE NOTE: Request for reconsideration must be received within 10 calendar days of this notice.

### **APPEAL PROCEDURE**

There is no administrative appeal for the preliminary plat approval interpretation decision. Pursuant to Chapter 36.70C RCW and CMC 15.11.100, as applicable, the preliminary plat approval interpretation decision may be appealed to the King County Superior Court within 21 days by any person with standing. Any such appeal must comply with the standards and procedures set forth in the Land Use Petition Act, Chapter 36.70C RCW.

As provided in RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. Any request for a valuation change must be accompanied by sufficient sales information to support the requested change in assessed value. Requests must be made in the office of the King County Assessor.

A copy of the decision is attached and incorporated by reference. For more information, contact the City Clerk at (425) 333-4192.

**OFFICE OF THE HEARING EXAMINER**

**CITY OF CARNATION**

**REPORT AND DECISION**

**CASE NO.:** PRELIMINARY PLAT INTERPRETATION REQUEST  
LP-18-0001, TOLT MEADOWS II

**APPLICANT:** John Day Homes  
P.O. Box 2930  
North Bend, WA 98045

**ATTORNEY:** Duana Kolouskova  
11201 S.E. 8<sup>th</sup> Street, Suite 120  
Bellevue, WA 98004

**PLANNER:** Amanda Smeller, City Planner

**SUMMARY OF REQUEST:**

Interpretation of construction vehicle access restrictions (if any) for home building in the Tolt Meadows II subdivision.

**SUMMARY OF DECISION:** See Decision.

**DATE OF DECISION:** August 13, 2020

**PUBLIC HEARING:**

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

The hearing convened on July 29, 2020, at 7:05 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 1 - Staff Report
- EXHIBIT A - Applicant Letter Requesting Interpretation
- EXHIBIT B - Preliminary Plat Decision dated January 31, 2019
- EXHIBIT C - Traffic Control Plan
- EXHIBIT D - Application for Construction Permit in City Right-of-Way
- EXHIBIT E - Eastside Fire and Rescue Comments
- EXHIBIT F - City Engineer Comments
- EXHIBIT G - Bob Jean Comments
- EXHIBIT H - Kristina Batischev Comments
- EXHIBIT I - Kamila Pawlik Comments
- EXHIBIT J - Christine Jenson Comments
- EXHIBIT K - Pam Young Wagner Comments
- EXHIBIT L - Dana McCabe Comments
- EXHIBIT M - Glenn Ehrlich Comments
- EXHIBIT N - Betsy Sundquist Comments
- EXHIBIT O - John Huffman Comments
- EXHIBIT P - Graham Nicastro Comments
- EXHIBIT Q - Craig Tasa Comments

**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.**

DUANA KOLOUSKOVA, attorney at law, appeared on behalf of John Day Homes, which submitted the interpretation request. The interpretation is of facts already determined and no additional facts should be put into the record. The Examiner issued a Decision approving the preliminary plat subject to conditions of approval on January 31, 2019. Condition 50 allows an interpretation of the construction access to the plat. The Decision and condition addressed construction access during plat development, but not during the home building stage. The Hearing Examiner reviews and conditions preliminary plats under RCW 58.17. The responsible official did not require SEPA mitigation for the construction access. No plat conditions address access. The Staff Report has no conditions addressing a construction access. However, at the hearing a lot of discussion occurred regarding a direct plat access to 45<sup>th</sup>. No SEPA mitigation measures and no conditions of approval restrict access to the plat. The Hearing Examiner did find a voluntary agreement to allow a construction access via a private driveway onto 45<sup>th</sup>. However, no safety concerns were identified regarding the use of existing, public roads. This plat is no different from any other plat that uses public roads for access. All infill development has to use existing streets. Here, the plat infrastructure construction is complete, and the construction access is no longer needed. The City asserts that the building permit stage is also covered by the plat decision. However, if such is the case, we are now talking about a new plat condition that would govern building permits. City streets

used for access are designed to accommodate Tolt Meadows II, and the plat is no different from other infill plats. The applicant has now decided to use City streets for access and not the driveway. No condition requires the continuation of using the driveway. The sidewalks for the plat are constructed and home construction vehicles must go over sidewalks and curbs. No evidence showed that public roads could not be used for home construction. The interpretation can't be based on public input, but must be based on the decision, conditions, and SEPA mitigation. The applicant volunteered to utilize the driveway during plat construction. The Examiner has the power to review the conditions based on Condition 50.

JOHN DAY, John Day Homes, appeared and testified that he did offer the driveway access condition at the public hearing based on concerns. During a recess he went to Mr. McFarland to volunteer the driveway access for plat construction. It was not an offer for access for housing construction. The driveway access was his idea, not the City's. They do not want to reopen the record, but just have the Examiner interpret the conditions. Nothing anywhere requires them to continue to use the driveway.

MS. KOLOUSKOVA reappeared and stated that the City has the burden of proof to establish that a plat condition or SEPA mitigating measure requires continued use of the driveway. Comments do exist, but no conditions. The Hearing Examiner found it was a voluntary action by the applicant.

ZACH LELL, City attorney, appeared and stated that we do have an issue of interpretation and not evidence. What did the decision mean in relation to site access? The City strongly disagrees with the applicant. The meaning of Finding of Fact 18C and Condition 50 is clear. Both were clearly based on hearing testimony and were not challenged by the applicant. No one filed a reconsideration or appeal. For that reason the Nykreim decision is controlling, as the decision is binding on all parties. The findings of fact are a verity on appeal. Here there was no appeal, so these findings are etched in stone. Condition 50 relates back and encapsulates the findings of fact, particularly 18C. Any change in the representations and findings require Hearing Examiner approval. It is the applicant's burden of proof to show that a change is needed. The conditions apply to homes and plat approval. It is common for a land use decision to go from general to specific. The specific would include the building permit process. He referred to Conditions 35-37 that require imposition of impact fees at the building permit stage, as it is common for a plat decision to reach forward. The fact that no SEPA mitigating measures or proposed conditions in the Staff Report exist is not controlling. The reason for the public hearing is to obtain testimony from the public. The public process in this case worked as intended. No changed circumstances warrant a change to the original plat decision. The City desires that the Examiner reaffirm his original condition.

AMANDA SMELLER appeared and referred to her Staff Report and introduced additional emails that were added as exhibits to the record.

AMY ARRINGTON, former City manager, appeared and testified that she thought the Tolt Meadows plat hearing was a great hearing. Everyone had a great attitude to include the public and the applicant. A discussion occurred regarding access to the plat from 45<sup>th</sup>, an arterial road. However, such access did not meet City standards. The applicant and City started working through the access issue before the hearing. Access was a big issue. The issue concerned not just the construction access, but the forever access for future residents. The developer talked about construction traffic utilizing the driveway from 45<sup>th</sup>. No distinction was made between plat and home construction. She thought the applicant's proposal was a great solution for the public. She was not surprised by the Examiner's decision. It was very clear. The findings of fact were built on all construction. It appeared to be a great partnership and she was excited to move forward.

JORGE GARCIA, City engineer, appeared and testified that the plat is substantially complete, and only a small part remains.

MR. DAY reappeared and testified that the plat is 100 percent complete. The City refused to allow them to bond any improvements.

MR. GARCIA then reappeared and testified that construction access to the plat from 45<sup>th</sup> is from an arterial street. 333<sup>rd</sup> and 42<sup>nd</sup> are not collector arterials, but residential local access streets.

BOB JEAN, interim City manager, appeared and testified that in his career he has been involved with a lot of development projects through the years. He began service with the City on May 20, 2020, and received calls regarding construction vehicles using 333<sup>rd</sup> and 42<sup>nd</sup>. He was aware of construction vehicle parking in the street. In the first case, Puget Sound Energy gave the applicant a very small window to do the work, and in the second instance, the applicant was pouring concrete on 45<sup>th</sup> and could not use it. He agreed that local access was necessary. Mike Day told him they would continue using 45<sup>th</sup> for home construction, but John Day said such was not the case. The Days chose to pave the plat road from north to south which required using neighborhood streets. They could have done the paving from south to north and used 45<sup>th</sup>. When installing landscaping, trucks parked on 333<sup>rd</sup> in a "no parking" area. Many projects have used one access for construction.

GLENN EHRLICH appeared and testified that he is vice president of the Tolt Meadows Homeowners Association and that the applicant agreed to address residents' safety concerns. The 45<sup>th</sup> access addressed safety for children in the community and the peaceful enjoyment of the neighborhood. However, numerous violations occurred. John Day agreed that these violations would not happen.

JESSICA MERIZAN appeared and does not agree with the offhand remark that the violations are not an issue. Clear violations of the agreement occurred. She is president of the homeowners association and does not want to have to look over her shoulder to ensure fulfillment of the agreement. There was huge concern regarding the agreement at

the hearing. She hopes for clarification, but is concerned about previous disregard of conditions.

KIM LISK, mayor of Carnation, appeared and testified that she was present at the previous hearing and listened to all speakers. Residents talked about safety and construction trucks. She introduced herself to John Day and suggested he attend a homeowners meeting. He told her that he had a solution. He spoke to the community and said that they would not need to access through Tolt I until the last few homes were constructed. She is surprised that we are having this hearing.

JIM RIBAIL appeared and testified that he spoke at the previous hearing. The solution to the construction truck issue was brought forward by the applicant. Mr. Day asked for a recess and then addressed the people in attendance and told them that they would keep the construction trucks coming from 45<sup>th</sup> until the last houses were constructed. This was his solution.

DAVID KANE appeared and testified that he attended the previous hearing and is the former homeowners president. Multiple violations have occurred. Trucks have parked illegally and have come through their neighborhood. Builders will need access to the site. Now, what assurance do we have that the City and the applicant will follow the conditions?

MIKE FLOWERS appeared and testified that he resides in the River's Edge plat and has observed construction of Tolt Meadows for the past two to three years. He has seen broken promises, and the applicant never held accountable. They are trying once again to get out of their agreement. The problems are the applicant's own doing.

BRAD McCABE appeared and testified that he is not impacted, but attended the previous hearing. A recess was called. The applicant gave the solution. They would build Lot 8 last and that would allow the construction trucks to continue using 45<sup>th</sup> until that time. It was not a solution pulled out of the air, it is what happened.

ALEXANDER BATISHCHEV appeared and noted several violations. We must keep the applicant accountable and held to this agreement. Public safety is a high priority and the conditions are written in the decision.

TIFFANY WELTON appeared and testified that she was assured by Mr. Day about the construction access. Everyone in attendance calmed down after he presented his solution. We should hold him accountable.

MR. LELL reappeared and stated that this is purely and simply a matter of interpretation of a small number of words. The overriding principle is to discover the original intent. The public attended the public hearing and heard the genesis of Findings 18C and Condition 50. The intent is very clear. Construction trucks would utilize the driveway. We now know the origin of the condition. The City requests interpretation as originally intended.

BOB JEAN reappeared and testified that the issue is simple and that he accepts the Hearing Examiner's decision. It includes construction access from 45<sup>th</sup> except for the last two homes. The applicant can't have it both ways. Limiting the access to 45<sup>th</sup> will not harm the applicant, but will create inconvenience.

MS. KOLOUSKOVA reappeared and stated that memories differ. The hearing occurred more than 18 months ago. For clarity, nothing in the record addresses the private conversations. There is no legal basis for restricting use of a public road. The applicant made a voluntary agreement, but it was based on the preliminary plat at a plat hearing. What could they appeal? Condition 50 deals with plat plans. Nykreim is actually supportive of the applicant's position as the decision must be applied as written. The Examiner would need to add a condition that explains how building permit traffic would be handled. Mr. Garcia said that all plat conditions are met. Nothing restricts access. Conditions 35-37 do provide continuing circumstances in their language. SEPA could have addressed the access issue. An access discussion would have been held before the threshold determination. If the conditions are to go forward, that must be clear in the decision. No condition in the decision refers to the building permit. They also want compliance with conditions moving forward.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 8:47 p.m.

**NOTE:** A complete record of this hearing is available in the office of the City of Carnation.

### **FINDINGS, CONCLUSIONS, AND DECISION:**

#### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Following a 2.5 hour hearing held on the evening of January 16, 2019, the Examiner issued a Report and Decision dated January 31, 2019, approving the preliminary plat of Tolt Meadows II. Said Decision granted preliminary plat approval of a 3.7 acre parcel that allowed its subdivision into 15 single-family residential lots. The parcel is located at 33323 N.E. 45<sup>th</sup> Street within the City of Carnation. Preliminary plat approval was granted subject to compliance with 51 conditions of approval. Neither the applicant, the City, nor parties of record submitted a request for reconsideration or filed an appeal pursuant to the Land Use Petition Act (LUPA), and therefore the decision is final.

3. The applicant has either completed or is very close to completing all requirements necessary to obtain final plat approval for Tolt Meadows II and to commence construction of homes on plat lots. Construction of plat infrastructure is essentially complete. During construction of plat infrastructure, construction vehicles accessed the site via an existing driveway extending into the site from 45<sup>th</sup> Street, a City arterial. Such access limitation was voluntarily offered by the applicant at the public hearing and incorporated into the Decision approving the preliminary plat. A dispute has now arisen between the applicant, the City, and residents of the abutting Tolt Meadows subdivision regarding whether the applicant's agreement and the Examiner's decision approving the preliminary plat also limits access for home construction vehicles to the existing driveway on 45<sup>th</sup> Street.
4. The applicant, John Day Homes, Inc., by and through its attorney Duana Kolouskova, assert that conditions of preliminary plat approval do not limit home construction trucks to the 45<sup>th</sup> Street access. The City and residents assert that the decision clearly requires such limitation, and that the applicant itself proposed such limitation. The applicant agrees that it voluntarily limited vehicular access for construction of the plat infrastructure to the 45<sup>th</sup> Street driveway. However, the applicant also asserts that it did not agree to limit access for construction trucks used in the house building phase to said driveway.
5. The issue before the Examiner is limited to an interpretation of the previous decision approving the preliminary plat. While residents and to a lesser extent the City have attempted to introduce other reasons for the limitation such as safety hazards or parking violations by construction trucks in plat development, the Examiner has not considered such reasons in this interpretation. As correctly noted by the applicant, at the preliminary plat approval stage the City identified no safety or other impacts that construction trucks would create by utilizing 333<sup>rd</sup>/42<sup>nd</sup>. The City therefore proposed no mitigating measures pursuant to the State Environmental Policy Act (SEPA) or conditions of plat approval restricting usage of such streets.
6. The Examiner's minutes of the testimony presented at the Tolt Meadows II preliminary plat hearing show that residents asserted that future plat traffic and construction vehicles utilizing residential streets would create significant safety concerns. One of the last speakers, John Huffman, testified as to his safety concerns, and concluded by questioning how the applicant proposed to route its construction trucks into and out of the area. He suggested a temporary, construction access.
7. Testimony of several speakers at the interpretation hearing establishes that near the end of the preliminary plat hearing, the applicant requested a recess. Mayor Kim Lisk testified that during the recess she introduced herself to John Day, John Day Homes (applicant), and suggested that he attend a homeowners association meeting. However, Mr. Day told her that he had already developed a construction truck access solution. Mayor Lisk then testified that either Mr. Day or his

representative, Rob McFarland, spoke informally to community residents attending the hearing. They told residents that construction trucks would not need to access through Tolt Meadows until it was necessary to construct the last few homes. Former City Manager Amy Arrington also attended the hearing and confirmed the mayor's testimony. She emphasized that Mr. Day and Mr. McFarland made no distinction between vehicles used in plat construction and home construction. She and evidently many neighbors thought it was a great solution.

8. Upon reconvening the hearing, the Examiner's minutes reflect that Mr. McFarland testified in part as follows:

ROB McFARLAND reappeared and testified on behalf of the applicant. Concerning construction traffic, they have already thought about that and intend to use the existing driveway as a construction access....

The Examiner incorporated the applicant's and specifically Mr. McFarland's representations made at the hearing into the Findings of Fact as follows:

6. ...Development of the plat will require removal/demolition of all structures. However, the applicant will use the residential driveway for construction access to the site.
17. The primary concern raised by residents in Tolt Meadows relates to the safety of the 62 adults and 40 children living therein... Concerns include not only additional plat traffic, but also commercial delivery trucks and construction vehicles....
18. The Examiner has carefully considered concerns raised by residents, but must agree with the proposed road configuration that does not include a new access onto N.E. 45<sup>th</sup> Street for the following reasons...
  - C. Construction vehicles will utilize the existing, residential driveway during development of the plat and construction of the homes. Thus, construction vehicles will not impact residents of Tolt Meadows. (emphasis added)

Finding 18 specifically addressed residents' concerns regarding temporary construction vehicles and permanent residential traffic through their neighborhood. However, the Examiner did not require a new, plat access onto N.E. 45<sup>th</sup> for the six reasons set forth in Condition 18. Finding (18C) specifically provides that construction vehicles will utilize the 45<sup>th</sup> Street access "during development of the plat and construction of the homes". Again, the applicant did not ask for reconsideration or appeal. The Examiner's minutes, Findings of Fact, and testimony at the interpretation hearing regarding the applicant's agreement clearly

establish that the applicant agreed to use the 45<sup>th</sup> Street driveway for both plat and home construction.

9. While conditions of approval do not specifically implement the applicant's agreement to utilize the residential driveway during both plat and home construction, Condition 50 provides:

50. 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. (emphasis added)

Condition 50 specifically incorporates "representations made" and "proposals submitted at the hearing". The applicant for the first time at the preliminary plat hearing submitted a proposal to use the 45<sup>th</sup> Street residential driveway for both plat and home construction vehicles. The applicant's proposal for construction vehicle access is a "representation made" and a "proposal" "submitted at the hearing" and is therefore incorporated in Condition 50. Finding 18C specifically refers to construction vehicles utilized in construction of the homes. No ambiguity exists in the findings and conclusions.

10. It is clear that the applicant agreed that construction vehicles utilized in the home building phase were included in its proposal to use 45<sup>th</sup> Street for the following reasons:

- A. The applicant submitted an "Application for Construction Permit in City Right-of-Way" on January 22, 2019, six days following the hearing and prior to the Examiner issuing his decision. Said application requested a permit to use the driveway on 45<sup>th</sup> Street as a construction access and does not distinguish between plat and home construction.

- B. Finding 18C is clear that construction vehicles "will" utilize the residential driveway during construction of homes. The applicant did not request clarification or reconsideration of Finding 18C. Such verifies its proposal to include use of the residential driveway for home construction vehicles.

- C. The applicant called Mr. John Day as a witness. He testified that at the recess he authorized Mr. McFarland to volunteer the plat driveway access for plat construction only. However, the applicant did not call either Rob McFarland or Mike Day as witnesses. Mr. McFarland testified at the preliminary plat hearing that the applicant would use the existing driveway as a construction access, but expressed no limitation as to plat construction only. Mr. Jean testified that Mike Day told him that they would continue using

the 45<sup>th</sup> driveway for access during home construction. As held by our Washington Supreme Court in Pier 67 Inc., v. King County, 89 Wn. 2d 379 (1977):

...We have previously held on several occasions that where relevant evidence which would properly be a part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, without satisfactory explanation, the only inference which the finder of fact may draw is that such evidence would be unfavorable to him. In so holding, we have noted, “[t]his rule is uniformly applied by the courts and is an integral part of our jurisprudence”.... 89 Wn. 2d 379 @ 385, 386

Thus, it can be assumed that Mr. McFarland and Mr. Mike Day would agree that the applicant’s representations and proposal included utilization of the 45<sup>th</sup> driveway for house construction.

11. The applicant asserts that in addition to the lack of a condition of approval enforcing its representation/proposal to utilize the driveway access for home construction, neither the City nor the Examiner can prohibit the use of City public streets for construction vehicles. Such argument is reasonably analogous to the “invited error doctrine” as addressed by our Washington Court of Appeals in Joe Humbert, et. al., v. Walla Walla County, 145 Wn. App. 185 (2008). As explained by our Court of Appeals:

Appellants next contend that the hearing examiner erred in imposing the intersection improvement requirements listed in Condition 23. Since appellants affirmatively agreed to those improvements with DOT, a nonparty to this action, and conveyed that information to the hearing examiner, they cannot be heard to claim error when the examiner adopted those conditions. The challenge is precluded by the invited error doctrine.

“The invited error doctrine prohibits a party from setting up an error in the trial court then complaining of it on appeal...The invited error doctrine has been applied to administrative actions just as it has trial court proceedings.... 145 Wn. App. 185 @ 192.

In the present case, as clearly found in Finding 18C, a verity that can no longer be challenged, the applicant proposed and represented that it would use the residential driveway for vehicular access for construction of both plat infrastructure and houses. The applicant cannot now claim that the City cannot prevent it from utilizing City streets for access to the plat for home construction.

12. Accepting the applicant's interpretation violates the intent of the public hearing process. The applicant's representatives met with residents during a recess in the preliminary plat hearing and agreed to limit home construction vehicles to the 45<sup>th</sup> driveway. The applicant's representative subsequently confirmed said agreement under oath to the Examiner. Accepting the applicant's interpretation would significantly, adversely impact the credibility of the land use decisionmaking process. Residents (and the City) heard both informally and formally from the applicant's representatives, and also read the decision to include Finding 18C and Condition 50. Interpreting the decision to allow home construction vehicles to utilize City streets would cause one to question the public hearing process.

**CONCLUSIONS:**

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The decision approving the preliminary plat of Tolt Meadows II is not ambiguous and needs no interpretation. The record contains no distinction between vehicle access for plat infrastructure construction and home construction. To the contrary, the decision specifically refers to construction vehicle access for both stages of construction.
3. The decision clearly shows that the applicant represented and proposed to restrict the access for construction trucks for home building to the driveway access to 45<sup>th</sup> Street. The Examiner and the City accepted the applicant's proposal.
4. Findings in the preliminary plat decision do not reflect conversations among the applicant, City staff, and residents as such occurred at a recess, occurred off the record, and occurred outside the presence of the Examiner. However, testimony at the present hearing confirms the applicant's testimony at the preliminary plat hearing and the accuracy of Finding 18(C).

**DECISION:**

The City has shown that the January 31, 2019, decision approving the preliminary plat of Tolt Meadows II needs no interpretation, and therefore it will stand as written. The applicant's request for an interpretation of said decision that would restrict only those vehicles used in plat infrastructure construction to the 45<sup>th</sup> Street driveway is hereby denied. The preliminary plat decision incorporates the applicant's representation and proposal to utilize the 45<sup>th</sup> Street driveway as the exclusive access for vehicles used in home building for the Tolt Meadows II plat (exception Lot 8).

ORDERED this 13th day of August, 2020.



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**STEPHEN K. CAUSSEAUX, JR.**  
Hearing Examiner

TRANSMITTED this 13th day of August, 2020, to the following:

**APPLICANT:** John Day Homes  
P.O. Box 2930  
North Bend, WA 98045

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CITY OF CARNATION