

**BEFORE THE LIBERTY LAKE ZONING
ADMINISTRATOR**

IN THE MATTER OF A REQUEST FOR REASONABLE USE EXCEPTION FOR THE FOURTH ADDITION OF LEGACY RIDGE WEST SUBDIVISION, FILE NO. 2014.PL0003 **) FINDINGS OF FACT,
) CONCLUSIONS, AND
) DECISION**

THIS MATTER, Case No. LUA2025-0008, a request for the granting of a Reasonable Use Exception to allow for the development of the fourth addition of Legacy Ridge West on land with slopes in excess of 30% was received from Whipple Consulting Engineers, Inc., acting as agent for the property owner and developer, MTK Management, LLC, on March 5, 2025. Additional, supplemental information as requested by the City, was submitted on March 31, 2025, May 15, 2025, August 25, 2025, and September 23, 2025. The matter was decided upon on September 24, 2025, pursuant to the City Development Code, Section 10-6B-2(B), Reasonable Use Exceptions.

FINDINGS OF FACT

1. Legacy Ridge West Preliminary Plat was approved by the Liberty Lake City Council on November 11, 2014, to subdivide 198.64 acres into 281 lots for single family dwellings, and 3 lots with uses as permitted in the M-2 zone. The Legacy Ridge West Preliminary Plat, as approved, contained 89.83 acres of common open space, 14.5 acres of private roads.
2. The subject property encompasses the entirety of approved Legacy Ridge West preliminary plat, located east of Kramer Parkway, and to the west and southwest of Spokane County’s closed landfill. Portions of the approved preliminary plat have already been final platted.
3. The zoning of the majority of the property is R-1 (Single Family Residential), with a small portion of the property zoned M-2 (Community Center Mixed Use). The area impacted by this reasonable use request is zoned R-1 (Single Family Residential).
4. The City of Liberty Lake Comprehensive Plan Land Use Map designates the property as Single Family Residential, and Community Center Mixed Use.
5. The Findings, Conclusions, and Decision for Legacy Ridge West Preliminary Plat (**Exhibit A**), signed and dated October 30, 2014, acknowledged that approximately 1/3 of the site of the Legacy Ridge West Preliminary Plat has slopes exceeding 30% grade, and the majority of the site had erodible soils. In his findings and conclusions, the Hearing Examiner states:

“The project site contains a substantial amount of steep slopes and erodible soils. However, the proposal as designed and conditioned addresses these conditions, and in this way is consistent with applicable development standards. For example, the project must comply with Section 10-3C-2 of the city development code, which requires certain landscape conservation practices be followed. See Exhibit 1, p.41.

The project is also required to comply with development standards related to critical areas, found in Chapter 6 of the development code. To protect erodible soils, much

of the development site has been set aside as open space. See id. For areas that will be developed, there are sufficient conditions upon the development to guard against significant impacts. See id.

6. The Hearing Examiner's Findings, Conclusions and Decision, in the matter of Legacy Ridge West Preliminary Plat, File No. 2014.PL0003 contained relevant conditions of approval, including:
 - *Condition 2.c: The project shall comply with City Development Code Chapter 6, Environment, specifically as related to critical areas and any form of potential disturbance to critical areas shall be reviewed and mitigated as required by Chapter 6.*
 - *Condition 13: At the time of final plat submittal, a geo-hazard mitigation plan, prepared by a qualified landslide or erosion specialist that conforms to City guidelines for stormwater management or any applicable regulation adopted by the City of Liberty Lake providing erosion and landslide protection, shall be submitted per City Development Code Section 10-6B-5.*
 - *Condition 15: The recommendations included in the Legacy Ridge West Preliminary Geo-Hazard Evaluation Report shall be followed throughout project development, as applicable until replaced by a geo-hazard -mitigation plan.*
7. Following preliminary final plat approval, four minor modifications to the preliminary plat have been approved by the City (see **Exhibit B, Minor Modification Decisions**). To be classified as a Minor Modification, the proposal must meet the following criteria:
 - No changes in land use;
 - No increases in the number of dwelling units;
 - No changes in the type and/or location of access ways, drives, or parking areas that affect off-site traffic;
 - No increases in the lot coverage proposed for non-residential use by more than 5 percent where previously specified; and/or usable open space;
 - No reductions of more than 5 percent of the area reserved for common open space;
 - No reductions to specified setback requirements to a degree that the minimum setback standards of the zoning district cannot be met; or
 - No changes similar to those listed above, which are likely to have an adverse impact on adjoining properties.
8. The first minor modification requested grading to reduce the area of slopes greater than 30% on several lots and an open space area. That request was approved on April 3, 2018.
9. The second minor modification requested a reduction in common open space by 0.3% overall, and 2.9% within Legacy Ridge West 2nd Addition, to allow for a conversion of lot types from attached single family townhomes to detached, single family homes. That minor modification was approved on November 4, 2021.
10. The third minor modification requested a change to the internal lot layout, recognizing a reduction in the number of lots platted in the first three phases, and proposing to shift additional lots to Phase F, the fourth addition of Legacy Ridge West. That application showed additional roadways with what appeared to have only minimal potential impacts to areas of more than 30% slope. That minor modification resulted in a reduction in the number of lots originally approved (281 platted lots) to a total of 274 platted lots. That minor modification was approved on August 21, 2024.

11. On October 21, 2024, MTK Management, LLC applied for a Mass Grading Permit for Legacy Ridge West Phase F (the area now referred to as Legacy Ridge West 4th Addition), with plans as prepared by Whipple Consulting Engineers (see **Exhibit C**).
12. The City Engineer requested a Geohazard Evaluation, a Geotechnical Report and a Drainage Report via e-mail on November 18, 2024. The Geotechnical Report was submitted on November 18th, and the drainage calculations and basin map were submitted on November 19th. The Geohazard Report was submitted on December 24, 2024. These reports are attached as **Exhibits D-1, D-2 and D-3**. Of note, Figure 2-2 and Figure 2-3 (pages 8-9 of **Exhibit D-3**) show significant excavation and fill in areas of severe slope (30% or greater) and severe erosion potential.
13. Article 10-6B regulates development in Critical Areas, including geologically hazardous areas. City Development Code §10-6B-5(A) states the “geologically hazardous areas” include erosion and landslide hazard areas, including areas identified as “a slope of thirty percent or greater” and soils identified as “having a severe potential for erosion”.
14. Regarding “geographically hazardous areas”, City Development Code §10-6B-1(A)(3) states:

“Development should be discouraged in geologically hazardous areas unless it can be demonstrated that a hazard area can be developed consistent with public health and safety. Development permits may be conditioned to mitigate certain hazards”, and,

“Geologically hazardous areas may be used as open space for recreation, rangeland, forest, wildlife habitat, and other uses as appropriate.”
15. Regarding the intent of these regulations, City Development Code §10-6B-1(B)(4 & 5) state:

“It is the intent of these regulations to allow development in geo-hazard areas only when hazards can be mitigated to protect the public health, safety, and general welfare”, and

“In addition, the intent of these regulations is to recognize that property rights and public services are an essential component of our legal and economic environment. Where such rights and public services are seriously compromised by the regulations contained in this article, impacts may be permitted provided there is appropriate mitigation.”
16. City Development Code §10-6B-2(B) provides that the Zoning Administrator may grant a request for a “Reasonable Use Exception” for development in critical areas, if an applicant can demonstrate that the strict application of standards detailed in Article 10-6B, Critical Areas, would deny all reasonable use of the property. To grant a reasonable use exception, the Zoning Administrator must make the following findings:
 - Applications of this article would deny all reasonable use of the property; and
 - There is no reasonable use with less impact on the wetland, fish and wildlife habitat, or geo-hazard area; and
 - The requested use or activity will not result in any damage to other property and will not threaten the public health, safety, or welfare on or off the property; and
 - Any alteration to the wetland, fish and wildlife habitat, or geo-hazard area is the minimum necessary to allow for reasonable use of the property; and

- The inability of the applicant to derive reasonable use is not the result of actions by the applicant in subdividing the property or adjusting boundary lines thereby creating the undevelopable condition after the effective date this Code.

Findings shall be detailed in a written decision that shall include conditions necessary to serve the purpose of the article, that shall be mailed to the applicant and adjacent property owners, including property owners across public rights-of-way or private easements. This written decision is subject to appeal procedures as detailed in City Development Code §10-4G-2(H).

17. Based on the Geohazard Report (reference Exhibit D), the City Engineer advised the applicant's engineer that per City Development Code §10-6B-2(B), a Reasonable Use Exception would be required if the land was to be developed as proposed, due to the proposed substantial excavation and fill in geologically hazardous areas (specifically in areas of greater than 30% slope and areas of highly erodible soils). This determination was confirmed by the Community Development Director via e-mail on December 30, 2024 (see **Exhibit E**).
18. On March 5, 2025, Todd Whipple of Whipple Consulting Engineers submitted a request for a Reasonable Use Exception (RUE). (**Exhibit F, RUE First Submittal**), and the supporting Geotechnical submittal (**Exhibit G, First Submittal Geotechnical Documentation**). The request encompassed only a portion of the area proposed for development in the Legacy Ridge West 4th Addition Final Plat.
19. After reviewing the first submittal, on March 24, 2025, the Community Development Director advised the applicant that additional information was required in order to issue a decision on the requested RUE (see **Exhibit H**).
20. Todd Whipple provided a second submittal for the RUE request on May 15, 2025 (see **Exhibit I**), which expanded the RUE request to encompass all lots and roadways proposed in the Legacy Ridge West 4th Addition Final Plat.
21. A fourth minor modification to the preliminary plat was submitted on May 15, 2025, concurrently with the second submittal for this requested Reasonable Use Exception. It proposed an internal reconfiguration of the lots in the fourth addition, as previously approved in the third modification. The modification significantly reduced the volume of excavation and fill in geologically hazardous areas. The minor modification was granted a conditional approval on June 27, 2025, conditioned upon an approval of this Reasonable Use Request (reference **Exhibit B**).
22. In the second submittal (reference **Exhibit I**), the applicant showed how the fourth minor modification actually reduced the impact on geographically hazardous areas by reducing the amount of cut and fill in those areas, compared to the grading originally proposed following the third minor modification. Figure 5 on page 6 of Exhibit I compares the grading changes proposed currently to those contemplated in the original plat; suggesting the grading impacts from the proposed plat revisions to be minor.
23. Also, in the second submittal (reference **Exhibit I**), the applicant provided bid information for construction of this phase and compared the per lot construction cost for the 43 lots originally approved in this area as part of the preliminary plat approval, to the per lot cost for the 64 lots now proposed for this area. In summary, the applicant states:

“Succinctly, denial of the RUE would result in this parcel not being able to be developed, that could then not be brought to market and developed, in the near future and maybe never.”

24. On July 8, 2025, the City requested that Budinger update the Geohazard Evaluation and Engineering Report to address the revised grading plans submitted with the Minor Modification, and requesting that the Geotechnical Engineer make a finding regarding whether the project poses potential threats to public health, safety or welfare. The City's second review comments are attached as **Exhibit J**.
25. On August 25, 2025, the applicant made a third submittal, appended hereto as **Exhibit K**. The Geotechnical Engineer of Record (GEOR) reviewed the updated grading plans, revised their exploration location maps to the new road/lot layout, and prepared a technical memorandum outlining their recommendations. The technical memorandum concluded that the revised plan contained in the third submittal offered greater benefit to the project than the original proposal of March 24, 2025, from a geotechnical perspective:

“The total length of proposed roadway within the site has been decreased by approximately 100 feet, and the alignments are configured in a manner that complements the natural contours of the site. Reconfiguration of the design has resulted in a decrease of total cut and fill quantities required for construction – approximately 83,700 and 17,100 cubic yards, respectively. Although the maximum cut/fill thicknesses increased, the maximum permanent slope inclination is still proposed as 2H:1V. The increase to lots sizes may result in lesser square footage of impermeable surfaces constructed, therefore likely decreasing the volume of stormwater runoff that will need to be treated and disposed of.”

26. On September 16, 2025, the City provided 3rd review comments, asking for the Engineer to clarify his findings regarding the project's potential threats to public health, safety or welfare (which appeared to contain a typo), as well as an update to sheet C4.1, which does not reflect revised grading quantities (see **Exhibit L**).
27. On September 23, 2025, a fourth submittal was received from Whipple Engineering (see **Exhibit M**) which provided an updated sheet C4.1, and the following statement from the Geotechnical Engineer of Record:

“Provided the GEOR is retained to confirm that conditions anticipated are actually encountered during construction, and the recommendations in the previous geotechnical reports are implemented, we conclude that the proposed improvements are not expected to result in damages to existing properties outside the site and will not threaten the public health, safety or welfare on or off the property.”

The Technical Memorandum from the GEOR dated July 24, 2025, included in **Exhibit M** referenced Geotechnical Reports appended to this document as **Exhibits D-1, D-3** and **Exhibit G**.

CONCLUSIONS OF LAW

1. **Strict application of the requirements of City Development Code Article 6B, Critical Areas, with respect to Geologically Hazardous Areas *WOULD* deny the owner reasonable use of the subject property.**

As stated in City Development Code §10-6B-1(B)(4-5), the intent of the Critical Area Ordinances is “to allow development in geo-hazard areas **only when hazards can be mitigated** to protect the public health, safety, and general welfare”, and “to recognize that property rights and public services are an essential component of our legal and economic environment. Where such rights and public services are seriously compromised by the

regulations contained in this article, impacts may be permitted provided there is appropriate mitigation.” [Emphasis added].

The Reasonable Use Exception is intended to provide the City with a vehicle to avoid a categorical or per se “taking” of private property. In *Lucas v. South Carolina (1992)*, the Supreme Court established that a “categorical taking” had occurred when a governmental regulation denies a property owner all economic, beneficial, or productive use of the land. In *Agins v. City of Tiburon*, the court held that land use controls constitute a “per se” taking if they deny a property owner an “economically viable use of the land”.

The applicant makes a case that due to the challenging development conditions on this site, unless a Reasonable Use Exception has been granted, the final phase of this development is not economically viable unless the number of lots can be increased to reduce the per lot cost. The requested increase in lots in this phase falls within the number of lots entitled when the preliminary plat was approved.

2. There *IS NO* reasonable use with less impact on the geo-hazard area.

The applicant has demonstrated a significant reduction in impacts to the geo-hazard area on the site from the original proposal to the current proposal and has demonstrated that the impacts will be mitigated.

3. The requested use *WILL NOT* result in any damage to other property and will not threaten the public health, safety, or welfare on or off the property.

With conditions that have been incorporated in the decision, the Geotechnical Engineer of Record has certified “...we conclude that the proposed improvements are not expected to result in damages to existing properties outside the site and will not threaten the public health, safety or welfare on or off the property.”

4. The proposed alteration to the geo-hazard area *IS* the minimum necessary to allow for reasonable use of the property, as demonstrated by the re-engineered design and the economic analysis.

5. The inability of the applicant to derive reasonable use *IS NOT* the result of actions by the applicant in subdividing the property or adjusting boundary lines thereby creating the undevelopable condition.

The inability to derive reasonable use from this property without the granting of a Reasonable Use Exception is the result of challenging development conditions and current economic conditions that are beyond the applicant’s control.

DECISION

In the matter of Case No. LUA2025-0008, a request for the granting of a Reasonable Use Exception to allow for the development of the fourth addition of Legacy Ridge West, Plat No. 2014.PL0003, on land with slopes in excess of 30% is hereby **APPROVED**, with the following conditions:

1. The Geotechnical Engineer of Record shall be retained by the applicant to confirm conditions during construction, and to certify that the recommendations contained in the Geotechnical Reports dated April 9, 2022 (reference **Exhibit D-1**), February 28, 2025 (reference **Exhibit D-3**), and the Budinger & Associates Technical Memorandum dated July 24, 2025 (reference **Exhibit M**) have been implemented during construction.

2. Any blasting permits shall be subject to the Blasting Mitigation Measures appended to this decision as **Exhibit N**.
3. Building setback lines shall be drawn on the final plat for all lots, parcels and tracts to indicate suitable areas for construction of structures or improvements.
4. At the time of building permit review, compaction reports shall be required for all lots within Legacy Ridge West 4th Addition.
5. A site specific geotechnical report/letter will be required for each home site, to include slope setbacks for each structure.

This decision is final unless appealed in writing, consistent with adopted appeal procedures.

Dated this 24th day of September, 2025.



Lisa D. Key, Director
Community Development Director

DECISION APPEAL PROCEDURE: Interested parties with standing, as defined in RCW 36.70C, have the opportunity to appeal this decision through an 'open record' appeal to the City Hearing Examiner. The decision may be appealed within fourteen (14) calendar days from the date the decision is rendered by delivering a notice of appeal to the City of Liberty Lake by mail or personal delivery. The notice of appeal must be received by 4:00 p.m. on the last day of the appeal period, unless the last day of the appeal period falls on a weekend or holiday, the notice of appeal shall then be due on the following business day. Appeal requests shall contain all information and items required in the City Development Code Section 10-4B-4, subsection H. The appeal procedure shall be as outlined in the City Development Code Section 10-4G-2, subsection H for Appeals of Administrative Interpretations by the Zoning Administrator.

If you have any questions, please call Lisa Key at (509) 755-6708.