

May 10, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
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DECISION ON CONCURRENCY DENIAL APPEAL

SUBJECT: King County Department of Transportation Road Services File No. **00-01-21-01**

BRUCE GOLDMANN
Appeal of Transportation Concurrency Denial

Location: 12219 – 308th Avenue Northeast

**Applicant/
Appellant:** **Bruce Goldmann**
807 Grant Avenue South
Renton, WA 98055

King County: Department of Transportation, Road Services Division,
Represented by **Richard Warren**
201 South Jackson Street
Seattle, WA 98104-3856
Telephone: (206) 263-4713
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal

PRELIMINARY MATTERS:

Application or petition submitted:	January 19, 2000
Appeal filed:	April 2, 2000

EXAMINER PROCEEDINGS:

Hearing Opened:

May 3, 2000

Hearing Closed:

May 3, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Concurrency denial: critical links

SUMMARY:

The traffic concurrency appeal is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On January 21, 2000 Bruce Goldmann filed an application for a transportation concurrency certificate for 30 acres located at 12219 – 308th Avenue Northeast. This concurrency application was in support of a proposal to short plat the 30 acres into 4 parcels. The application was tested for concurrency on February 7, 2000 and failed to receive a passing score on the critical link portion of the test due to over-capacity conditions on roadway links along Novelty Hill Road between Avondale and West Snoqualmie Valley Road. After some discussion with the Department of Transportation, the concurrency test for the Goldmann property was re-run on the basis that only 3 new lots were being created. On March 29, 2000, the application failed the critical link test again at the 3-lot level. On April 2, 2000 Mr. Goldmann e-mailed the Department concerning his intention to appeal the concurrency denial on the grounds of technical error, failure to adequately consider proposed mitigation, and deprivation of all reasonable use of the property. These 3 appealed bases are all authorized within KCC 14.65.040.A.
2. The data submitted by the Department of Transportation regarding the March 29, 2000 concurrency application denial shows 9 links along Novelty Hill Road in the vicinity of the Redmond Ridge urban planned development projects calculated to operate at volume/capacity ratios ranging from 1.11 to 1.47. These are all in excess of the 1.1 V/C threshold permitted under the ordinance.
3. The traffic distribution diagram for Mr. Goldmann's parcel shows 75% of new traffic generated by the proposed short plat traveling west on Northeast Big Rock Road to State Route 203, and approximately 75% of the westerly flow turning south on SR 203 the Northeast 124th Street to access the Northeast Novelty Hill Road corridor. Based on this distribution, more than 30% of

the traffic generated by the short plat during the P.M. peak hour would traverse the Unfunded Critical Links identified by the Department on Novelty Hill Road. Thus the threshold for application of the Unfunded Critical Link standard contained in KCC 14.65.020.C.1 is met by the Goldmann application. The 3 new lots proposed for the Goldmann parcel will send between 0.7 and 1.2 trips to the Novelty Hill Unfunded Critical Links, exceeding the 30% threshold of 0.576.

4. While the trip generation values attributable to Mr. Goldmann's 3 new lots are extremely small, the question as to whether they deserve regulatory recognition within the transportation concurrency analysis is a matter of legislative policy. Mr. Goldmann has failed to demonstrate that the Department's computations were erroneous from a technical standpoint. The fact that these values are miniscule does not prove that they are incorrect. The only testimony that Mr. Goldmann has brought to bear on the technical error issue relates to whether capacity values for Novelty Hill Road include new turn lanes currently under construction. Mr. Warren's testimony was that the Novelty Hill capacity calculations include all funded upgrades. Since this is a routine assumption, in the absence of evidence to the contrary Mr. Warren's testimony on this matter must be regarded as credible.
5. Mr. Goldmann has proposed as mitigation that he will sell his new lots only to persons who commit to avoiding Novelty Hill Road during commuter hours. While we have no reason to doubt Mr. Goldmann's intentions in this regard, such a restriction would not be enforceable either legally or practically. As such, it cannot be regarded as a reasonable proposal for mitigation.
6. Finally, Mr. Goldmann has alleged that denial of a concurrency certificate to him for his short plat proposal deprives him of reasonable use of his property. While one cannot dispute that the concurrency denial is at least a temporary burden on his full intended use of the property, the fact that it is presently used for residential purposes demonstrates that a reasonable use exists and continues to be permitted. Moreover, Mr. Goldmann has the option of short-platting the property in progressive stages, doing 1 or 2 new 5-acre parcels now, and deferring the remainder until either Novelty Hill Road is upgraded or the County Council eases its concurrency policy with respect to small scale property divisions.

CONCLUSIONS:

1. The Appellant has not demonstrated that the Department has committed a technical error within its March 29, 2000 concurrency test regarding property located at 12219 – 308th Avenue Northeast.
2. The Department did not fail to adequately consider alternative data or any traffic mitigation plan proposed by the Appellant.
3. The existing residential use of the property, while not optimal from the standpoint of the Appellant's ultimate plans, is a reasonable use. Therefore the Department's action in denying the concurrency application does not substantially deprive the Appellant of all reasonable use of his property.

DECISION:

The transportation concurrency appeal of Bruce Goldmann is DENIED.

ORDERED this 10th day of May, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 10th day of May, 2000, to the following parties and interested persons:

Bruce Goldmann
807 Grant Ave. S.
Renton WA 98055

Dick Etherington
KCDOT
MS- KSC-TR-0813

Richard Warren
KCDOT
MS- KSC-TR-0813

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 3, 2000 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF TRANSPORTATION SERVICES FILE NO. 00-01-21-01 – BRUCE GOLDMAN:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Richard Warren. Participating in the hearing and representing the Appellant was Bruce Goldmann. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 File Summary for 00-01-21-01 Bruce Goldmann Shortplat
- Exhibit No. 2 E-mail communication regarding 00-01-21-01 appeal, dated April 2 and 3, 2000
- Exhibit No. 3 Letter to Bruce Goldmann from Donald Ding (for Roy Francis) dated March 29, 2000, with 3 attachments
- Exhibit No. 4 Traffic model scenarios, 10 pages total
- Exhibit No. 5 E-mail communication from Richard Warrant to Bruce Goldmann, dated February 24, 2000
- Exhibit No. 6 TCM Application Summary, dated February 7, 2000, with 14 traffic model attachments
- Exhibit No. 7 Application, dated January 19, 2000, with 2 attachments
- Exhibit No. 8 Copy of certified mail receipt, dated March 31, 2000
- Exhibit No. 9 Telephone log comments, dated between February 23, 2000 and March 14, 2000
- Exhibit No. 10 The Valley View newspaper, front page article, "Redmond Ridge faces lawsuit over traffic studies", dated April 10, 2000
- Exhibit No. 11 Packet of documents submitted to the King County Council by Bruce Goldmann
- Exhibit No. 12 TCM Application Summary dated March 13, 2000 with several attachments
- Exhibit No. 13 KCDOT staff report to the Hearing Examiner, received dated April 19, 2000, with court case attachment *Presbytery of Seattle vs. King County*.

SLS:sje

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