

January 26, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

DECISION ON APPEAL OF DENIAL OF CERTIFICATE OF TRAFFIC CONCURRENCY

SUBJECT: King County Department of Transportation File No. **99-06-28-01**

HEARTHSIDE HOMES

Appeal of Denial of Traffic Concurrence Application

Location: 21005/21023 – 132nd Avenue Southeast

Appellant: Rick Chapman, *represented by*
Chris Brown, P. E.
879 Rainier Avenue North #A-201
Renton, WA 98055

SUMMARY OF RECOMMENDATIONS:

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

EXAMINER PROCEEDINGS:

Hearing Opened:	January 12, 2000
Hearing Closed:	January 12, 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:

- Technical error; Unfunded critical link; Horizon year

SUMMARY:

Appeal of denial of transportation certificate of concurrency for a 58 lot plat is denied.

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

FINDINGS:

1. On June 28, 1999, Hearthside Homes, Inc. ("Appellant") submitted an application for a certificate of transportation concurrency for a proposed 58 unit plat. The King County Department of Transportation evaluated the application using its then most recent traffic model designated R99A1. That model used 1995 base year data all projects approved for concurrency from January 1995 to December 1998, and all road improvement projects funded for construction in the 1999 six-year Capital Improvement Program. The data is continuously updated by concurrency approvals as they are issued.

On August 26, 1999, the Department of Transportation advised the Appellant that the proposed development failed the concurrency test because the proposed development would send more than 30 percent of its trips to an unfunded critical link. An "unfunded critical link" is a roadway critical to the zone's access which is not funded for improvement in the committed road network. Unfunded critical links are established by administrative rule. See KCC 14.65.020.C.1. and D.2. If a proposed development sends more than 30% of its peak hour trips to an unfunded critical link which will have a volume to capacity ratio greater than 1.1, the concurrency test is failed.

2. The Appellant requested reconsideration of the August 26, 1999 denial of the certificate of concurrency. This request was supported by a professional traffic corridor analysis, which used operations analysis techniques consistent with the Highway Capacity Manual. Following reconsideration by the Department, the denial was affirmed. The Appellant has timely appealed the denial to the King County Hearing Examiner.
3. The unfunded critical link to which the proposed development would send more than 30 percent of its traffic is South 212th Way, between SR 167 and 96th Way South. This road segment is one of the few arterial road connections between SR 167 and the Benson Highway (104th/108th Avenue Southeast) which serves the plateau east of Kent. The Department of Transportation projects the volume/capacity ratio of this critical link to be 1.14 in the year 2005. (A six year horizon is utilized by the Department in determining transportation concurrency).

4. The Appellant claims that the Department of Transportation committed technical error in determining the capacity of South 212th Way and in projecting the total volume of traffic which will utilize this critical link. The latter assertion addresses the method of projecting volume, and the determination of the appropriate horizon year to be considered.
5. The Appellant's analysis shows capacity on the critical link to be 4,320 passenger cars per hour, as compared to the 2,463 vehicle per hour capacity assigned by the Department of Transportation. The Appellant's computation differs from the Department's primarily due to elimination of the delay factors projected by the Department's model at the signalized intersections at each end of the roadway in issue (SR 167/SE 212th Street; and 96th Way Southeast/SE 208th Street).

The Appellant contends that cycling of the signal could be modified to improve the traffic flow on Southeast 212th Way. However, the Transportation Planning Division is unable to modify existing operating conditions. Signal modifications impact other affected traffic. The concurrency determination is based upon current conditions, projections of future traffic, and improvements funded in the County-adopted six year Capital Improvement Plan.

6. The Appellant contends that the Department's planning model utilizes information which is not as accurate as information which is available from actual traffic counts and analysis of operating conditions on the affected roadway. However, the use of a planning model is a professionally acceptable methodology. Ample data was used in constructing and running the model. The Appellant's alternative analysis, which also is consistent with professionally recognized standards, uses different data and yields a result indicating that the proposed development would not fail the critical link analysis. The existence of credible, alternative methodology and the availability of different data do not establish that the test run by the King County Department of Transportation was tainted by any technical error, or that the method used and its implementation was arbitrary and capricious.
7. The determination of a horizon year for measurement of traffic concurrency is a matter that can reasonably be disputed. The Department of Transportation's use of the sixth year following the application is consistent with the requirement established by ordinance that the six year Capital Improvement Program be considered in determining what road improvements will be in place to serve a development.

It is also relevant that the filing of a subdivision application may follow the issuance of a certificate of traffic concurrency by six months (which period may be extended for an additional six months). Preliminary subdivision approval ordinarily follows the date of the subdivision application by a period of six months to one year. Subdivisions, when granted preliminary approval, are allowed five years within which the conditions of final approval can be met and the sale of individual lots commenced. Although subdivisions may be developed and receive final approval in a shorter period of time, many do not. The use of the six year horizon for determining road capacity is not unreasonable, and does not constitute technical error.

CONCLUSIONS:

1. King County's method and data for projecting the volume to capacity ratio for SE 112th Way, using a planning model, is a reasonable approach to the determination of traffic concurrency. The Appellant failed to demonstrate by a preponderance of the evidence that the road capacity of Southeast 112th Way was incorrectly determined by the King County Department of Transportation. No technical error has been shown to exist in the County's determination that the proposed development fails the critical link analysis.
2. The use of a six year horizon for determining traffic concurrency for a proposed subdivision is reasonable, and does not constitute technical error.

DECISION:

The appeal by Hearthside Homes, Inc. of the denial of a certificate of traffic concurrency for a plat of 58 units for property located at 21005/21023 – 132nd Avenue Southeast is **DENIED**.

ORDERED this 26th day of January, 2000.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 26th day of January, 2000, to the following parties and interested persons:

Chris Brown, P. E.
879 Rainier Ave. S. #A-201
Renton, WA 98055

Richard Warren
KCDOT
MS-KSC-TR-0813

Rick Chapman
2911-1/2 Hewitt Ave. #6
Everett, WA 98201

Dick Etherington
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 appeals of transportation concurrency. 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 JANUARY 12, 2000 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF TRANSPORTATION
FILE NO. 99-06-28-01 – HEARTHSHIDE HOMES:

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Richard Warren and Dick Etherington. Participating in the hearing and representing the Appellant were Chris Brown and Rick Chapman. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Notice of Transportation Concurrency Application Denial, #99-06-28-01, dated 8/26/99
- Exhibit No. 2 Statement of Appeal and various attachments, 1-35, dated 12/16/99
- Exhibit No. 3 KCDOT Transportation Concurrency Denial staff report, File No. 99-06-28-01
- Exhibit No. 4 Series of papers submitted by Chris Brown, pages 1-18

JNOC:sje
99-06-28-01 RPT