June 26, 2001

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION ON CONCURRENCY DENIAL APPEAL

SUBJECT: Department of Development and Environmental Services File No. **00-09-15-01**

VEN LIN CHAN
Appeal of Transportation Concurrency Denial

Location: 164XX – 140th Place NE, Woodinville, WA
Parcel #: 1526059089

Appellant: **Ven Lin Chan**
13231 SE 43rd Place
Bellevue, WA 98006
e-mail: vlchan@hotmail.com

King County: Department of Development and Environmental Services, Comprehensive Long Range Planning Section, *represented by* **Richard Warren**
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SUMMARY OF DECISION:

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

ISSUES/TOPICS ADDRESSED

- Transportation concurrency

SUMMARY:

The appeal is denied.

FINDINGS OF FACT:

1. Appellant Ven Lin Chan owns an undeveloped parcel of property located in the Rural area south of Woodinville. The parcel is zoned RA 2.5 and, according to Mr. Chan, could be subdivided into four lots. Mr. Chan wishes to create a two-lot residential subdivision of the parcel. In furtherance of this plan, he submitted an application for a transportation concurrency certificate to the King County Department of Transportation on September 15, 2000. The parcel is located on the east side of 140th Place Northeast within concurrency zone #300. According to King County DOT staff, concurrency zone #300 for the past two years has been out of compliance with its mandated Transportation Adequacy Measure threshold of 0.69, and concurrency certificates have been routinely denied by the Department during this period.

2. On October 30, 2000, the Department performed a computerized analysis for the Appellant's two-lot short plat application resulting in a site TAM score of 0.7560. As explained by the TCM application summary, "the site TAM score represents the average congestion during the PM peak hour experienced by trips to and from the site. The site TAM score is compared to the zone threshold to determine if it exceeds the adopted LOS standard for the zone." Since the zone threshold for concurrency zone 300 is 0.69, the Appellant's concurrency run resulted in a failing score, and the concurrency certificate application was denied pursuant to a letter issued by the Department on November 16, 2000.

3. After exhausting his informal review remedies, Mr. Chan filed an appeal of the Department's concurrency denial decision on February 6, 2001. The Department accepted an e-mail from Mr. Chan on April 6, 2001 that expanded the basis of his appeal.

4. As provided at KCC 14.65.040A, Mr. Chan appealed the concurrency certificate denial on the grounds that the Department committed a technical error, the Department's action would substantially deprive him as owner of all reasonable use of his property, and the Department's action was arbitrary and capricious. These appeal issues were further refined within a pre-hearing order issued by the Hearing Examiner's Office on May 8, 2001. Within this order, the technical errors at issue were identified as consisting of allegations that the Department incorrectly assigned traffic to the road network serving the Appellant's parcel, and applied to the Appellant's parcel an incorrect zone threshold value. The allegation of arbitrary and capricious action was defined as including the Appellant's parcel in a transportation service area that encompasses both Urban and Rural zones. A public hearing on Mr. Chan's appeal was held by the Hearing Examiner's Office on June 18, 2001.

5. Within the categories of both technical error and arbitrary and capriciousness action, the Appellant has put forward a number of arguments suggesting that, due to his property's proximity to the City of Woodinville, a higher zone threshold value should be employed to reflect the fact that the traffic characteristics for this Rural-designated area are dominated by the contiguous Urban zone. Mr. Chan points out that most of the traffic along 140th Place Northeast is pass-through traffic going to and from Woodinville, and asserts that the logical regional centroid for such traffic would be within the city and not the Rural Area. He also argues that the Department's public rules at PUT 10.3-2(PR) authorize the director within Section 6.1.4.2 to "evaluate a proposal assuming its traffic is generated to or from a different zone than the one in which it is physically located if a proposed development would be more accurately evaluated using the different zone".

6. The Appellant's assertion that an Urban TAM standard should be employed when analyzing traffic impacts for his property is, in reality, a challenge to the logic and propriety of the County's ordinance scheme and not an assertion of technical error by the Department. Mr. Chan is probably correct in his contention that Rural areas located near incorporated cities have traffic patterns that reflect the fact of contiguity to an Urban area, and that this fact may be prejudicial to approval of nearby Rural applications when traffic in the Urban area exceeds the adjacent Rural TAM zone threshold. Mr. Chan is also probably right when he suggests that this kind of zone threshold disparity discourages rural development near the city boundary and pushes such development further out into the Rural area, an effect which may be viewed as contrary to Growth Management Act objectives. But this argument is a critique of the ordinance itself, not the Department's action pursuant to the ordinance. It may provide a rationale for changing the ordinance to incorporate a transitional zone threshold for Rural areas lying immediately adjacent to the Urban boundary. The record is clear, however, that the Department followed the dictates of the ordinance as it existed at the time of Mr. Chan's application; accordingly, such action was neither technical error nor arbitrary and capricious. Finally, the authority conferred upon the Department director by Section 6.1.4.2 of the Department's rules is discretionary. The Department's decision not to exercise such discretionary authority is not reviewable within this appeal procedure.

7. Mr. Chan's assertion that the concurrency test for his property should have employed Northeast 171st Street rather than Northeast 175th Street as a preferred route for traffic passing through Woodinville presents a more conventional technical error claim. The record demonstrates, however, that the Department on May 8, 2001 performed alternative runs for the Chan property based on a Northeast 171st Street traffic assignment and, while such exercise produced a somewhat lower TAM score for the site, the resultant figure still was well above the 0.69 zone threshold.

8. The Appellant's claims that the traffic impact of a two-lot subdivision is *de minimus* and that denial of a concurrency certificate for a two-lot subdivision deprives Mr. Chan of reasonable use of his property are also without merit. The County's TAM requirements are based on a strict standard that prevents the approval of additional cumulative traffic congestion impacts when the zone threshold has been exceeded. Once the zone cap has been reached, it is the intent of the ordinance to defer further development until needed facility upgrades have been made. This policy is mandated to apply to large and small projects alike.

   In a similar manner, the Appellant's right to a reasonable use is satisfied so long as a building permit for residential construction can be obtained for the existing parcel. As pointed out by staff, constitutional takings analysis does not require accommodation of the right to subdivide the parcel. While from a financial standpoint the market value of the parcel may reflect its subdivision potential, a delay in development potential realization is not a loss of reasonable use so long as some economically productive use of the parcel currently remains.

CONCLUSIONS:

1. While Mr. Chan has presented a well-reasoned critique of the concurrecy process as it operates at the Urban/Rural interface, the potential shortcomings identified lie within the structure of the ordinance itself and not in the Department's implementation of it.

2. The Appellant has not met his burden of proof to demonstrate that the Department committed technical error with respect to his concurrency certificate application, that the Department's action would substantially deprive him of all reasonable use of his property, or that the actions of the Department were arbitrary and capricious.

DECISION

The appeal is denied.

ORDERED this 26th day of June, 2001.

_____
Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 26th day of June, 2001, to the following parties and interested persons:

Ven Lin Chan
13231 SE 43rd Place
Bellevue WA 98006

George Sheng
4946 - 131st Place SE
Bellevue WA 98006

Richard Warren
Transportation Planner
King Co. Dept of Transportation
MS-KSC-TR-0813

Dick Etherington
King Co. Dept. of Transportation
MS-KSC-TR-0813

NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision.

MINUTES OF THE JUNE 18, 2001, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. 00-09-15-01 – VEN LIN CHAN:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Richard Warren and Dick Etherington. The Applicant represented himself.

The following exhibits were offered and entered June 18, 2001 into the record:

Exhibit 1: Letter dated May 30, 2001 & enclosures from King County DOT
Exhibit 2: Appellant's Report dated June 3, 2001
Exhibit 3: King County DOT material supporting concurrency denial

SLS:gao
misc/cases/00-09-15-01 RPT