March 2, 2005

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L01S0055**

MUIR WEST
Preliminary Short Subdivision Revision Appeals

Location: On the west side of 119th Avenue Southeast south of Southeast 196th Street

Appellants: **Richard Osborn** *et al*.
19701 – 121st Avenue Southeast
Renton, Washington 98058
Telephone: (253) 854-3499

Springhill Homeowners Association
represented by **Stanley Gillman**
19715 – 119th Avenue Southeast
Renton, Washington 98058

Applicant: Jim Muir
represented by **Hans Korve**
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Auburn, Washington 98002
Telephone: (253) 333-2200

King County: Department of Development and Environmental Services,
represented by **Barbara Heavey**
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeals
Department's Final Recommendation:	Deny appeals
Examiner's Decision:	Appeals denied

EXAMINER PROCEEDINGS:

Hearing Opened: February 15, 2005
Hearing Closed: February 15, 2005

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.

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

FINDINGS:

1. On November 30, 2004, the King County Department of Development and Environmental Services (DDES) issued a decision granting preliminary approval of a short subdivision revision subject to conditions, for the proposed *Muir West* short subdivision. The proposed revision essentially increases the number of residential lots from four lots to five and adds a recreation and drainage tract. (Preliminary short subdivision approval of the prior four-lot version was granted by DDES on September 13, 2002, subject to conditions.)

2. The subject .76-acre rectangular property is located in the southwest corner of the Southeast 196th Street/119th Avenue Southeast intersection, with the length extending south along 119th Avenue Southeast. The zoning is R-6-SO, and sanitary sewer and public water service are supplied by the Soos Creek Water and Sewer District.

3. The basic criteria to be applied in considering short subdivision cases are stated in KCC 19A.08.060 and, among other criteria of little relevance here, include state subdivision law (Chapter 58.17 RCW); the county surface water management title (Title 9 KCC); and county zoning regulations (Title 21A KCC).

4. Timely appeals of DDES's preliminary short plat revision approval were filed by two groups: Richard Osborn *et al*.; and the Springhill Homeowners Association (by Stanley Gillman, President).

5. A pre-hearing conference on the appeal was held by the King County Hearing Examiner's Office on January 20, 2005, and a pre-hearing order was issued on February 4, 2005. The appeals as identified in the pre-hearing order raise the following issues:

   Osborn *et al.*

   A. Adverse drainage impacts: sufficiency of the downstream drainage system to accommodate development drainage without increasing flooding, erosion and sedimentation. The Appellants assert that under applicable regulations, downstream drainage problems cannot be made worse by the proposed short subdivision, and must also be made less severe in order to meet DDES's Condition 2.A.(3)("Flow Control")

requirement for "mitigation" of downstream drainage problems. The Appellants note a number of errors in the drainage information used in the short subdivision revision review and recommend corrections and improvement specifications for downstream drainage facilities.

Springhill Homeowners Association

B. Permissibility of five residential lots in the short plat: The Association asserts that the short subdivision's differential of lot and home sizes compared to the nearby *Springhill* subdivision will deteriorate from *Springhill* property values, cause on-street parking congestion and generally degrade the neighborhood.

C. Degradation of the *Springhill* neighborhood will also occur as a result of the feared loss of existing 119th Avenue Southeast entry signage/brickwork/landscaping placed at the intersection with 196th Street Southeast (and actually located on the subject short subdivision property rather than in the road right-of-way).

D. Potential hazard of the proposed short subdivision recreation area to neighborhood children in that it will tend to attract resident and non-resident children to an unsupervised play area next to a detention pond, and will be an attractive nuisance to child pedestrians passing by the play area and thus potentially subject them to traffic hazards in the directly adjacent congested and sight distance-deficient Southeast 196th Street. It will also be a potential eyesore due to feared lack of proper maintenance by the short subdivision lot owners

E. Potential for the detention pond to be a breeding ground for mosquitoes and aggravate an existing mosquito problem in the area.

6. Chapter 9.04 KCC, part of the Surface Water Management title, requires submittal and implementation of a drainage plan for land development activity, such as the short subdivision at issue. DDES has reviewed a Level 1 Drainage Report submitted by the Applicant for the proposed short subdivision, from which it concludes that the proposal can conform to code drainage plan specifications and requirements. Detailed drainage review will be conducted pursuant to Chapter 9.04 KCC prior to construction plan approval and implemented, including by the installation of necessary facilities (see KCC 9.04.050 *et seq*., and 19A.08.160(A)(1)), prior to development and short plat recording.

7. Among other conditions of its approval of the preliminary short subdivision revision, DDES has imposed a requirement of a full drainage plan and a number of drainage-related "core requirement" conditions; Condition 2.A.(3), which addresses the core requirement of flow control, contains a special notation that mitigation is required for downstream drainage problems.

8. Osborn *et al.* claim a number of factual errors in the Level 1 Drainage Report submitted by the applicant, and express concern that the short subdivision will continue the accumulation and aggravation of drainage problems already experienced over the last 15 years with increasing development of the area. They are concerned that past developments have not implemented solutions to drainage problems, and fear that will also be the case with the proposed short

subdivision.[1] They also interpret code requirements, the Surface Water Design Manual and the referenced drainage condition applied by DDES to mean that existing drainage problems must be cured by this short subdivision. That is an erroneous reading of the applicable regulations and the term "mitigate" in DDES's approval condition: put very generally, a development must convey its drainage increase (that over the natural condition) in a manner that does not cause new drainage problems. Included in the mandate not to cause new drainage problems is not to aggravate or cause downstream flooding conditions. But there is no requirement to cure existing problems caused by other development.

9. DDES notes that the eventual short subdivision engineering plans and detailed downstream analysis required with the engineering plans will document existing facilities and make corrections to errors in the previously submitted Level 1 downstream drainage analysis.

10. Drainage impacts of development are addressed by the required adherence to the county drainage regulations governed by Title 9 KCC.

    A. The specifics of drainage system design, including detention, detention volume, flow control, downstream routes, subsurface flow accommodation and impacts, security and safety, dimensional and other specifications, and maintenance burdens, covenants, reliability, etc., are matters under the administrative authority of DDES in reviewing and approving the required engineered drainage plans and analyses. Under Chapter 9.04 KCC, full compliance with applicable drainage regulations must be demonstrated in the construction plan review stage of short subdivision development, and implemented or otherwise assured prior to short subdivision recording (see KCC 9.04.090).

    B. Conformity with Title 9 KCC is the general standard, and the appropriate level of review at the preliminary short subdivision stage[2] is whether the conceptual drainage approach and DDES preliminary review demonstrate that the development can feasibly conform to the applicable code requirements. In its approval, DDES has concluded that it can; absent a showing of clear error, the Examiner accords considerable deference to DDES in its interpretation of the code and does so with regard to Title 9 KCC compliance feasibility in this case. [*Mall, Inc. v. Seattle*, 108 Wn.2d 369, 739 P.2d 668 (1987)]

11. Although it has presented much information about drainage facilities and problems in the subject area that will be useful in the preparation of a full drainage plan and DDES's regulatory review for construction plan approval, the Osborn *et al.* appeal has not shown reversible error on the part of DDES in conditionally approving the preliminary short plat revision with respect to drainage issues. Group members have expressed interest in continuing to be involved in DDES's administrative review of the drainage issues to give input, join in a cooperative approach, etc. Though that will not be facilitated as easily as through the appeal hearing, it can be accommodated reasonably through the agency's administrative processes. Interested persons may also wish to inquire with county Surface Water Management officials about the possibility of areawide or regional drainage improvements to alleviate the problems experienced over the last 15 years.

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[1] Many of the drainage issues presented are also under consideration in the adjacent *Muir East* short subdivision; appellants are concerned that proposed *Muir East* solutions will be relied on in the subject short subdivision, but then not implemented.
[2]The basic land use decision is made at the preliminary short subdivision review stage; see KCC 19A.04.300 and 19A.08.060, and Chapter 19A.12 KCC generally.

12. The Springhill Homeowners Association raises several appeal issues. As noted, the *Springhill* residential area lies nearby to the property and in part is accessed from Southeast 196th Street via 119th Avenue Southeast adjacent to the site. The first Association appeal issue is the undesirability and incompatibility of five residential lots versus the four previously approved by DDES in the prior short subdivision proposal. The Association fears that the differential of lot and home sizes resulting from the increased density, compared to the adjacent *Springhill* subdivision, will deteriorate *Springhill* property values, cause additional parking congestion[3] and degrade the neighborhood.

13. The issue of lot size is a matter governed by the applicable zoning regulations under the applied R-6-SO zoning, with which the proposal complies. Because the zoning code regulates development on the basis of overall density rather than minimum lot size in the urban residential zones, only minimal dimensional requirements must be met. The lots within the proposed short subdivision meet the minimum dimensional requirements. [KCC 21A.12.030 and .070] DDES and the Examiner on appeal have no authority to regulate the density of development or the number of lots in a manner more restrictive than the zoning regulations allow.[4]

14. Similarly, home sizes are not a matter to entertain in short subdivision review, but are subject to setbacks and lot coverage limits, the building code and any other regulations which pertain to post-subdivision development on individual lots. Home sizes and architectural types are not directly regulated by the county in conventional short subdivision applications such as this. The issue of parking congestion is a matter governed by the off-street parking regulations contained in the zoning code and general police regulation of on-street parking via signage, etc. Two off-street parking spaces are required for each lot under the zoning regulations. There is no legal authority to reverse the short plat revision approval based on anticipated fear of parking congestion. There is also no authority to reverse the revised short plat approval based on speculative fears of neighborhood and property value deterioration.

15. The Association additionally is concerned about the potential loss of *Springhill* identification signage presented by the landscaped brickwork at the 119th Avenue Southeast entry onto the Southeast 196th Street. The brickwork on the west side of the entry is on the subject property, and evidently not within any formal easement or other protected property mechanism under the control of the Association. (It was placed on the property by the owner of the site, who was also the *Springhill* developer.) The developer's representative stated that there is no intention to remove it, but in the final analysis its retention is a private property matter not regulated by the county.

16. The Association also fears that the recreation tract proposed for the corner of 119th Avenue Southeast and Southeast 196th Street will present a hazard to neighborhood children, concerned that it may attract resident and non-resident children to an unsupervised play area next to a proposed detention pond and close to the congested and asserted (though not demonstrated in the record) sight distance-deficient Southeast 196th Street. Detention ponds are subject to safety regulations which require either very shallow construction or safety fencing. The preponderance

[3] Apparently, existing congestion is at least partly caused by school-related overflow parking.

[4] Testimony was received objecting to legislative zoning actions, allegedly without due notice, and an increase in the number of lots allowed to be developed in short subdivisions. Those are matters in the legislative arena and are not within the Examiner's jurisdiction.

of the evidence in the record is persuasive that the recreation facility will not pose any greater attractive nuisance than the school across Southeast 196th Street, which has much more extensive recreation facilities which would attract children. In summary, the record is not persuasive of any significant personal safety hazard posed by the recreation tract which would merit denial of the proposed revision. The potential eyesore of the recreation area due to feared lack of maintenance is not a matter governed by the county, and cannot form the basis for reversal of short plat approval.[5]

17. The potential for any detention pond in the recreation/drainage tract to be a breeding ground for mosquitoes and aggravate an existing mosquito problem in the area has not been demonstrated in the record. Regardless, it is a matter subject to maintenance and implementation of health regulations; it does not justify reversal of the short subdivision approval.

18. In the topical areas raised on appeal, the proposed short subdivision revision complies with the applicable approval criteria.

CONCLUSIONS:

1. The facts in the record demonstrate that the proposed short subdivision revision would conform to the applicable county zoning regulations and other land use controls. In particular, the lot sizes and overall density are specifically permitted under the existing R-6-SO zoning.

2. The proposed short subdivision revision is shown to be able to meet applicable drainage and recreation regulations.

3. Since the proposed *Muir West* short subdivision revision is shown to comply with the applicable regulatory criteria for preliminary approval in the topical areas addressed by the two appeals, the Appellants have not met their burden of proof to demonstrate reversible error in DDES's approval and the appeals shall therefore be denied.

DECISION:

The appeals are DENIED.

ORDERED this 2nd day of March, 2005.

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Peter T. Donahue, Deputy
King County Hearing Examiner

[5] Although not raised as a specific appeal issue, Association members are concerned about Association maintenance burdens and liabilities if the short subdivision homeowners are invited into the existing Springhill Association instead of forming their own. Those are private matters not regulated by the county.

TRANSMITTED this 2nd day of March, 2005, to the parties and interested persons of record:

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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. 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 MUIR WEST SHORT PLAT REVISION APPEALS, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L01S0055.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Barbara Heavey, Curt Foster and Ted Cooper representing the Department; Hans Korve representing the Applicant; Appellants Carl Lund for the Springhill Homeowners' Association and Richard Osborne, Carol Stoner Marie Eastman, Christine Osborne, John Overby; and John McLaren and Bill Dugovich.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Short plat site plan/map (revision), received June 23, 2004
Exhibit No. 2	Preliminary approval for revised short subdivision file no. L01S0055, dated November 30, 2004
Exhibit No. 3	Preliminary approval for short subdivision file no. L01S0055, dated September 13, 2002
Exhibit No. 4a	Notice and statement of appeal from Richard Osborn, et al. dated December 17 and 27 2004
b	Notice and statement of appeal from Springhill Homeowners' Association, received December 17, 2004
Exhibit No. 5	Appeal response from Hans Korve dated January 6, 2005
Exhibit No. 6	DDES file no. L01S0055
Exhibit No. 7	Binder from Appellant Richard Osborn *et al*.
Exhibit No. 8	Aerial map of subject area w/color with annotations
Exhibit No. 9	Timeline
Exhibit No. 10	Photographs (13 pages of color copies)
Exhibit No. 11	Map of subject area with key provided by Springhill Homeowners' Assoc.
Exhibit No. 12	DDES staff report
Exhibit No. 13a	Photograph (color copy) of catch basin
13b	Photograph (color copy) of outlet pipe for catch basin
13c	Photograph (color copy) of Brown driveway
13d	Photograph (color copy) of Brown driveway

PTD:gao
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