

July 2, 2002

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

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **L99VA006 and L99VA003**

**JAMES (RANDY) NEWELL**  
Variance Appeals

Location: 20764 160<sup>th</sup> Street Northeast, Woodinville

Appellant: Schaetzel, et. al.,<sup>1</sup> *represented by*  
**Richard Schaetzel**  
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Applicant: **James Newell**  
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King County: Department of Development and Environmental Services  
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<sup>1</sup> Terry Lavender, Richard Schaetzel, Barbara Young, Willard and Vera West, Margaret and William Drazil, and David Christianson. These names were provided by Mr. Schaetzel.

## SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Approved subject to conditions
Department's Final Recommendation:	Approved subject to conditions
Examiner's Decision:	Approved subject to conditions (modified); appeal granted (in part)

## EXAMINER PROCEEDINGS:

Hearing Opened:	May 28, 2002
Hearing Closed:	June 21, 2002

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.

## KEY WORDS/TOPICS ADDRESSED:

- Sensitive areas
- Wetlands
- Steep slopes
- Variance
- Wetland buffer

## FINDINGS OF FACT:

1. **Variance Request.** James (Randy) Newell, contingency purchaser of the two parcels which are the subject of this appeal review, proposes to develop each parcel with a single family residence. Due to the presence of class 2S (salmonid bearing) stream buffer and class 2 wetland/buffer variances from sensitive areas protective regulations are required for each parcel.
  - a. **Tax Assessor parcel no. 172606-9107 (north parcel).** Of the two parcels, the north parcel is the most extensively encumbered by sensitive areas protective regulations. Land development in the vicinity of Bear Creek is required by KCC 21A.24.360.A to set aside a minimum 150 foot wide buffer of undisturbed native vegetation plus a 15 foot wide building setback line (BSBL). The Department, in granting a variance for the north lot, reduced the buffer width but not the BSBL width. As approved by the Department, the buffer width must be 100 feet, thereby achieving a 115 foot setback from Bear Creek from the edge of the drainfield to be located within and serving the north lot.

In addition, a class 2 wetland abuts portions of the west half of the south boundary of the north lot. A class 2 wetland requires a 50 foot wide buffer area plus a 15 foot wide setback area, thereby achieving at least a 65 foot distance between the protected wetland and the nearest development. In this case, the Department has approved a 25 foot wide buffer between the class 2 wetland and the proposed drainfield area and a 15 foot wide buffer plus 5 feet of BSBL (totaling a 20 foot setback) between the class 2 wetland and the proposed residence.

A second wetland comprising approximately 400 square feet is located within the north lot near the east half of the south boundary line. DDES staff concludes that the small wetland

is hydrologically isolated and therefore too small to regulate pursuant to KCC 21A.24. The hearing record contains no evidence or testimony to contradict that Departmental conclusion regarding the second wetland.

- b. **Tax Assessor parcel no. 172606-9108 (south lot).** The south lot is not encumbered by the Bear Creek protective buffer regulation. However, the class 2 wetland which partially encumbers the north lot is located almost wholly in the northwest corner of the south lot. In its variance action concerning the south lot, the Department approved a 25 foot wide buffer with no BSBL between the proposed drain field area and the wetland. Between the proposed residences, the Department's variance action would require a 15 foot wide buffer plus a 5 foot wide BSBL, thereby achieving a 20 foot setback between the wetland boundary and the nearest structure.
2. **Department's Action.** The rationale for the Department's decision on the north lot is contained in its Zoning Variance Report and Decision dated February 22, 2002 for DDES file no. L99VA006 (exhibit no. 1). The Department's rationale for its decision on the south lot is contained in its Report and Decision of that same date regarding DDES file no. L99VA003 (exhibit no. 1). Having reviewed the appeal and issues related to the appeal—discussed below—the Department filed with the Examiner a preliminary report dated April 26, 2002 which elaborates upon the Department's rationale for both files and which responds to the appeal of Schaetzel, et al (exhibit no. 2). These three reports are entered in this hearing record as exhibit numbers 1A, 1B, and 2, respectively, and are found to be accurate. Consequently, they are incorporated in this Examiner's report by this reference.

The Department's variance approval action sets aside considerably more buffer area and requires a greater setback than proposed by Applicant Newell. For the north lot, the 130 foot setback from Bear Creek required by the Department's variance decision exceeds the Applicant's original proposal by 95 feet. The Department's decision reduces protection of the wetland in order to increase protection of Bear Creek. Whereas Applicant Newell originally proposed a 30 foot setback from the edge of the wetland (with no buffer) the Department now requires a 20 foot setback from the wetland (including a 5 foot BSBL) to the proposed residence and a 25 foot wide buffer between the wetland and the proposed drainfield area. On the south lot, the Department has increased the setback from the wetland from Applicant Newell's 15 foot proposal to 20 feet at the house and 25 feet in all other locations.

Finally, the Department reduced the front setback for each lot from 20 feet to zero feet. The zero setback on both lots abuts a 60 foot wide ingress/egress easement which the Department concludes will never be developed by a roadway section or anything else 60 feet wide. The evidence of record supports the Department's conclusion. The ingress/egress easement terminates at the Bear Creek buffer area and serves only two homes. The affected property owners have discussed but have not taken action toward reducing the width of that easement.

3. **Appeal filed.** On March 15, 2002 Richard Schaetzel and others<sup>2</sup> filed appeal from the Department's action. The Appellants argue that the variances granted by the Department fail to comply with the following criteria established by KCC 21A.44.030:
- The strict enforcement of the provisions of this title (KCC Title 21A; Zoning) creates an unnecessary hardship to the property owner. KCC 21A.44.030.A.
  - The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under identical zone. KCC 21A.44.030.C.
  - The variance does not create health and safety standards, is not materially detrimental to the public welfare or is not unduly injurious to property or improvements in the vicinity. KCC 21A.44.030.D
  - The variance is the minimum necessary to grant relief to the Applicant. KCC 21A.44.030.J

These arguments are considered further in the remaining portions of this report and decision.

4. **Unnecessary hardship; comparable rights and privileges enjoyed by other properties in the vicinity and identical zone; minimum necessary to grant relief.** The Appellants argue that a hardship can only be demonstrated if all reasonable use of the property is denied. Without responding to the veracity of that assertion, we can examine the site plans of record (exhibit nos. 9 and 37) and easily find the argument is ill-founded due to the lot area and regulatory encumbrances placed by county code upon the lot. A 150-foot wide buffer plus a 15-foot wide BSBL plus the Seattle/King County Department of Public Health (SKCDPH) setback requirement from seasonal water bodies (30 feet) plus drain field area requirement plus reserve drainfield requirement and plus front yard requirement, if enforced without variance, would deny the property owner any use of this property other than for drain field. That, we find, would be unreasonable—to allow a drain field but not the residence to be served by the drainfield. Consequently, regarding the north lot, the “unnecessary hardship” argument will not be examined further. The north lot is a perfectly obvious candidate for variance.

The south lot is not so extensively encumbered by code requirements as the north lot (subject as it is to only a 50-foot wide buffer rather than a 150-foot wide buffer) but is a much smaller lot. Thus, even the south lot would be so constrained by unvaried code requirements (public health setback, drainfield and reserve drainfield requirements, buffer area and front yard setback) that even it would be severely constrained as not to be reasonably buildable or usable in the absence of some variance from those codes.

The Appellants also base a portion of their appeal on the reasonable use exception requirements contained in KCC 21A.24.022. However, no reasonable use exception has been applied for. If the Department's action had denied Newell's application or if it constrained the application so severely as to deny “reasonable” use, then Applicant Newell could apply for reasonable use exception. The standards contained in that section (KCC 21A.24.022) do not apply here.

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<sup>2</sup> Terry Lavender, Barbara Young, Willard and Vera West, Margaret and William Drazil, Richard Schaetzel, and David Christianson.

The Appellants have submitted their review of footprint comparisons of homes in the same zone and vicinity of the subject property. They differ from the Applicant's submittal in support of the variance application principally because, apparently, they do not measure precisely the same thing. Following the Department's written directions, the Applicant submitted data indicating the "general size" of other homes in the area. Alternatively, the Appellants sought more precise data from King County GIS records. A "footprint" according to the Department, is the exterior dimensions of the foundation. This description is consistent with the Examiner's understanding of the term. The Appellants' survey of lots and homes in the area (within approximately 1000 feet of the proposed developments), 45 houses in all show an average building footprint (including garage area) of 2051 square feet, compared to the Department's condition of variance approval limiting the home (including garage area) to approximately 3400 square feet for both the north lot home and the south lot home. The argument then follows that the Department cannot have granted the "minimum necessary" when it has approved a building footprint roughly one-third larger than the *average* of existing homes in the neighborhood. The Appellants' data also shows that Applicant Newell proposes to use a significantly larger percentage of each lot, which—they would argue—is further evidence of lack of "minimum necessary" measures. However, that evidence is balanced by the fact that, according to the Appellants' own evidence, the Newell/Julin parcels are substantially smaller than the neighborhood average. In fact, one of them is less than half the neighborhood average. In a way, however, even this information supports the Appellants' position: *Applicant Newell is proposing a larger than average house on a smaller than average lot.*

The Appellants present considerable evidence regarding the importance of the Bear Creek Basin planning area, its importance to salmon habitat, and public policy (including the Endangered Species Act) supporting stringent measures to protect salmon. Exhibit nos. 28I, 29, 30, 23E, and 28A. The Appellants argue that the Applicant's proposal would retain only 44 percent of the properties in natural vegetative cover, whereas the Appellants' recommended solution (equivalent to the average building footprint of the neighborhood, described above) would reduce the proposed building footprints by one-third to one-half, thereby achieving a higher natural vegetative cover percentage of these properties. Bear Creek basin planning area policy encourages a 65-percent native vegetation retention. The 1999 Technical Review Draft of the Lake Washington Salmon Recovery Plan states:

It is clear that the key to sustaining these populations is first protecting and restoring salmon habitats for without these all other recovery actions would be fruitless. In the Bear/Cottage Creek system, urbanization is the largest threat to spawning habitat.

5. **Material Detriment to the Public Welfare.** The Appellants argue that there is not sufficient room on the south lot to fit the septic system within the 30-foot wetlands setback and 100-foot stream setback, given the size of house proposed. The Department responds to this position by saying that the septic setback standards are enforced by the Seattle/King County Department of Public Health (SKDPH) and that they fully expect the SKDPH to enforce those standards.

The Appellants argue further that the proposal flies in the face of not only adopted County plans and programs (Bear Creek Basin Plan, Waterways 2000 Program, for instance) but also the promises that King County has made to National Marine Fisheries. In response, the Department points to the substantial proposed development plan modifications that they are requiring as conditions of variance approval—changes which the Department imposed in direct response to the very policies cited by the Appellants.

6. **Footprint.** The Applicant argues that the Department never asked for the “footprint” of proposed buildings. Rather, the Department asked the Applicant for the “general size” of nearby homes. The standard variance application form promulgated by the Department supports the Applicant’s position. It does not ask for building “footprint.” Further, both the Applicant and the Appellants claim that they have had difficulty obtaining a consistent interpretation of the term “footprint.” The term is not defined by County code. However, the definition offered by the Department at hearing—the exterior dimensions of the proposed foundation—is readily understandable and is consistent with County practice for at least the past 18 years. The argument over the meaning of “footprint” does not diminish the significance of the Appellants’ core argument—that the action approved by the Department and 3000 square feet plus two-car garage, or approximately 3400 square feet is not the “minimum necessary.”
7. **Conclusions adopted as findings.** Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

#### CONCLUSIONS:

1. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.
2. The Appellants confuse the term “unnecessary hardship” with the standard for “taking.” The two terms or concepts are not synonymous. Unreasonable use exception applications are received by the Department in order to address the “taking” (taking of property without compensation) concern. Applicant Newell has not filed a reasonable exception application. Unless the Department denies his variance application or advises him that the Department is determined to deny his application, a reasonable use exception application would be premature.
3. As to “unnecessary hardship,” the findings above reveal that indeed Applicant Newell would suffer unnecessary hardship if not actual taking were the full force of the regulatory codes that apply to the subject property to be enforced without variance. See, particularly, finding no. 4. Likewise, the subject property would be deprived of the right and privilege of single-family residential development were the applicable codes enforced to their full extent without variance. Again, such a circumstance warrants variance approval.
4. No health or safety hazards have been identified in this hearing record. Although the Appellants expressed concern regarding the stability of a steeply sloped portion of the north lot, which, the Appellants suspect could be adversely affected by septic-charged ground water, the Department’s staff geologist and expert witness found no public safety hazard resulting even if such sloughage were to occur. However, he concluded, such sloughage or instability of the bank must be considered remote and speculative. Moreover, the Appellants never overcame their burden of proof by demonstrating that the steep bank which concerns them comprises sufficient definition to fall under KCC 21A.24 protected sensitive areas. The best evidence and argument the Appellants offered showed only that more study would be appropriate (in the opinion of the Appellants’ witness). Nor have the Appellants shown that the proposed development, “as approved by the Department” would be “unduly injurious to property or improvements in the vicinity.”
5. To support the Appellants’ argument that the variance granted by the Department will cause undue injury to property or improvements in the vicinity, the Appellants point to the 1999

Technical Review Draft of the Lake Washington Salmon Recovery Plan, Waterways 2000, and other similar sources. These documents amply justify the rigorous conditions that the Department has applied to the variance (for instance, increasing the setback from Bear Creek from 35 feet to 130 feet), but do not carry the Appellants' burden to show with a preponderance of the evidence that the variance as approved will cause undue injury. The Department's decision on the variance request does not ignore the relevant and applicable policies and regulations. Rather, those policies and regulations provide the Department authority to require the immense improvements in setback over the Applicant's original proposal.

6. The Appellants have shown with a preponderance of the evidence that the variances as granted are not the minimum necessary. Testimony, Christianson; exhibit no. 28H. The objective of takings law is to assure the property owner reasonable use of his property. The "minimum necessary" standard may be applied in this case without jeopardizing that Constitutional objective. The "minimum necessary" surely cannot mean "one-third larger than the *average* size of other homes in the neighborhood." Neither the Department nor the Applicant has offered any sound reasoning which would support a 30-percent larger footprint than the average home in this ecologically sensitive area. Surely, King County did not adopt the Sensitive Areas Ordinance and other ESA-related policies and regulations in order to so substantially increase impervious areas located within the minimum buffer area width of a salmonid bearing stream. The average footprint size is good enough for the neighborhood; it is good enough for this Applicant. Furthermore, requiring the variance recipient to construct a home consistent with the average home footprint in the surrounding area cannot be construed as denying reasonable use of the property. People actually live in those neighboring homes. The proof is in the pudding, so to speak.

All this having been said, we note that takings doctrine—the case law rules of "nexus," "rough proportionality," and "reasonable use" apply to exactions imposed upon the Applicant. In this case, we have quite the opposite: Applicant Newell seeks an exception from the regulatory codes that apply to others. Finally, as noted elsewhere in this report and decision, neither the Department nor the Applicant has argued that imposing the "minimum necessary" standard as sought by the Appellants would deny the Applicant reasonable use of the property. The footprint, by the way, has no necessary relationship to the "height," "size," "general size," or "floor area," of the building. These aspects of the proposed development are not regulated by the variance decision below.

7. The findings above suggest that there has been some confusion among the parties regarding the term "footprint." That argument, for the most part, is irrelevant to this review. Rather, the relevant point is that the Appellants have offered more, and more precise, data to assess or measure "minimum necessary." We are unclear as to why the Department did not seriously reconsider its decision upon discovery of the data provided by the Appellants. The accuracy of the data is uncontested. (Rather, the argument arose over what and how to measure "general size" and "footprint".) Revealing this useful information late in the review process—as a consequence of the appeal—provides no justification for ignoring it. Considering the Appellants' data to be far more accurate and comprehensive than the data provided by the Applicant and the Department, the variance decision below will reduce the home footprint size from (approximately) 3400 square feet to the average home footprint size in the neighborhood plus 440 square feet for the garage (either attached or detached), to 2500 square feet including garage (attached or detached). We expect the change to be used to increase buffer and setback from Bear Creek.

8. The Appellants argue that the Department's variance decision on application file no. L99VA006 (north lot) is unreasonably vague. We disagree. It requires the Applicant to pay "an amount equivalent to the cost of enhancing twice the area of buffer impacted through this variance." That provides quite sufficiently specific direction to both the Applicant and the Department to achieve its purpose.

The Department recommends additional language to condition no. 9 of its decision on application file no. L99VA006. It recommends that, in the case King County Department of Natural Resources (DNS) cannot accept the compensating mitigation funds, then the Applicant shall perform compensatory off-site mitigation within the Bear Creek corridor. That language, is also quite sufficiently specific due to the abundance of regulatory standards contained in KCC 21A.24 which regulates compensatory mitigation.

9. Regarding the suitability of the septic system (to be reviewed by SKCDPH) feasibility of requirements and conditions, and accuracy of the sensitive areas protection notice on title, the Appellants simply have failed to meet their burden of proof. They have failed to show with a preponderance of evidence that the Department acted in error with respect to these concerns.

DECISION:

The appeal of Schaetzel et al is GRANTED only to the extent indicated in the order below.

ORDER:

- A. Variance application file no. L99VA006 is APPROVED subject to the following conditions:
1. A building permit shall be obtained from King County DDES within four years from this date. Otherwise, this action shall become null and void.
  2. The structure shall be developed to conform generally to the revised site plan (Exhibit D-7C) dated received March 20, 2001, *subject to these conditions*.
  3. A variance is granted to reduce the wetland buffer only as needed for construction of a single family residence and on-site sewage disposal system. The wetland buffer width required by DDES in its February 22, 2002, decision (15 feet adjacent to the structure, with a 5-foot building setback; 20 feet width at all other locations on the subject property, with a 15-foot BSBL) shall be expanded to the maximum extent possible consistent with condition no. 7, below.
  4. A variance shall be granted to reduce the stream buffer only as needed for construction of a single family residence and on-site sewage disposal system. The buffer width shall be no less than 100 feet, with a 15-foot BSBL.
  5. A fence or other permanent visual barrier shall be placed at the stream and wetland buffer upland boundaries, with a minimum of three wetland signs on the property.
  6. The front yard setback shall be reduced to 0 feet from the edge of the access/road easement



7. The maximum footprint of the proposed residence shall not exceed the equivalent of 2500 square feet including a two-car garage (a three car garage and smaller house footprint also could be approved).
  8. Prior to clearing and grading all tree snags and other woody debris used by Pileated woodpeckers will be marked in a highly visible manner and verified by DDES staff. The woodpecker snags and woody debris will be retained on site in the stream buffer of Bear Creek, to aid in foraging and nesting of Pileated woodpeckers.
  9. The Applicant shall pay to DDES a fee in lieu of compensatory mitigation, in an amount equivalent to the cost of enhancement of twice the area of buffer impacted through this variance. Compensatory mitigation will be required for the buffer reductions for both the Class 2 stream and the Class 2 wetland. DDES will forward the funds to King County Department of Natural Resources (DNR) to be assigned to a specific stream enhancement project within the Bear Creek Basin. If for any reason DNR does not accept the mitigation funds, then the Applicant shall perform compensatory off-site mitigation within the Bear Creek corridor.
  10. Prior to the construction of a proposed structure, the buffer edge, as approved, shall be marked in a highly visible manner such as a construction fence. After the buffer edge is marked, DDES Sensitive Areas staff shall be contacted for field verification.
  11. Prior to issuance of a building permit the owner shall file a Notice on Title approved by King County that depicts the on-site sensitive areas and buffers with the records and elections division.
  12. Bear Creek is considered a “significant shoreline of the State of Washington” and adjacent properties are subject to the King County Shoreline Management Master Program. Therefore, the proposed single-family residence is subject to KCC Title 25 Shoreline Management regulations. The proposed residence is exempt from a shoreline permit (“substantial development permit”) if the “construction on the shorelands is by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family,...” (WAC 173-27-040 2. [g]). *The owner or contract purchaser shall certify by notarized affidavit compliance with WAC 173-27-040(2)(g) at the time of building permit application.*
- B. Variance application file no. L99VA003 is APPROVED subject to the following conditions:
1. An application for a building permit shall be obtained from King County DDES within four years from this date. Otherwise, this action shall become null and void.
  2. The structure shall be developed to substantially conform to the revised site plan (Exhibit D-7C) dated received March 20, 2001, subject to these conditions.
  3. A variance is granted to reduce the wetland buffer only as needed for construction of a single family residence and on-site sewage disposal system. The buffer width established by the February 22, 2002, DDES decision (15 feet adjacent to the structure, with a 5-foot building setback; 25 feet in width at all other locations on the subject

property, with a 15-foot BSBL) shall be expanded to the maximum extent possible, consistent with condition no. 6 below.

4. A fence or other permanent visual barrier shall be placed around the wetland buffer edge, with a minimum of two wetland signs.
5. The front yard setback shall be reduced to 0 feet from the edge of the road easement
6. The maximum footprint of the proposed residence shall not exceed the equivalent of 2500 square feet including a two-car garage (a three car garage and smaller house footprint also could be approved).
7. Prior to clearing and grading, all tree snags and other woody debris used by Pileated woodpeckers will be marked in a highly visible manner and verified by DDES staff. The woodpecker snags and woody debris will be retained on site or placed on the adjacent parcel under the same ownership, in the stream buffer of Bear Creek, to aid in foraging and nesting of Pileated woodpeckers.
8. A detailed final wetland restoration plan shall be required to be reviewed and approved prior to issuance of a building permit for this parcel. A financial guarantee will be required at that time to insure successful implementation of the restoration, along with monitoring and maintenance for a minimum of three years.
9. Prior to the construction of a proposed structure, the buffer edge, as approved, shall be marked in a highly visible manner such as a construction fence. After the buffer edge is marked, DDES sensitive areas staff shall be contacted for field verification.
10. Prior to issuance of a building permit the owner shall file a notice on title approved by King County that depicts the on-site sensitive area and buffer with the records and elections division.

ORDERED this 2<sup>nd</sup> day of July, 2002

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 2<sup>nd</sup> day of July, 2002, to the parties and interested persons of record:

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Robert Nunnenkamp  
KC Parks and Recreation  
MS LBP-PR-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before July 16, 2002***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before July 23, 2002***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Court-house, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 28, 2002 and JUNE 21, 2002 PUBLIC HEARINGS ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99VA003 & L99VA006.

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Matthew Caskey, Laura Casey, Greg Wessel, and Greg Borba representing the Department; Terry Lavender, representing the Appellant; James Newell, the Applicant; David Christianson, Scott Branerd, Dick Schaetzel, Wayne Main, Braden Allen, Mr. Jensen, and Robert Julin. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1        Variance reports and decisions dated February 22, 2002
- Exhibit No. 2        Preliminary report to the Hearing Examiner dated April 26, 2002
- Exhibit No. 3        Variance applications dated February 9, 1999 (L99VA003) and  
March 11, 1999 (L99VA006)
- Exhibit No. 4        Applicant's justifications for variance dated February 9, 1999 and March 11, 1999
- Exhibit No. 5        Staff photographs taken by
- Exhibit No. 6        Wetland delineation dated February 9, 1999
- Exhibit No. 7        King County Assessor Map
- Exhibit No. 8        Applicant's square footage study of neighboring residences
- Exhibit No. 9        Applicant's Site Plan (Exhibit D-7C)
- Exhibit No. 10       Applicant's original site plans
- Exhibit No. 11A      DDES File No. L99VA003
- Exhibit No. 11B      DDES File No. L99VA006
- Exhibit No. 12       E-mail from Laura Casey showing fee calculation dated October 9, 2001
- Exhibit No. 13       Draft notice on title map for B94R2145
- Exhibit No. 14       Map showing boundary line change for L94L003
- Exhibit No. 15       Associated Earth Sciences, Inc., Stream Reconnaissance letter dated August 12, 1999
- Exhibit No. 16       E-mail from Greg Wessel regarding stream bank stability dated December 16, 1999
- Exhibit No. 17A      E-mail from Laura Casey to Matt Caskey dated August 3, 1999
- Exhibit No. 17B      Copy of field notes dated June 28, 1999
- Exhibit No. 18       DDES response to Appellant appeal questions dated April 26, 2002
- Exhibit No. 19       Letter from Laura Casey to the Hearing Examiner dated May 16, 2002
- Exhibit No. 20       Letter from Nelson Geotechnical Associates, Inc. to Braden Allen dated  
May 22, 2002
- Exhibit No. 21       Letter to the Hearing Examiner from Willard West dated May 1, 2002
- Exhibit No. 22       Letter to Randy Newell from Garet P. Munger dated May 1, 2002
- Exhibit No. 23A      Wetland delineation by Nick Gillen dated October 4, 1994/Notice on Title
- Exhibit No. 23B      Boundary line adjustment #94-06142069
- Exhibit No. 23C      Letter. to Mr. Schetzel to Examiner April 26, 2002
- Exhibit No. 23D      Memo to Mr. Newell from Schetzel dated April 26, 2002
- Exhibit No. 23E      Memo to examiner & parties from T. Lavender/attachment
- Exhibit No. 23F      Excerpt 1999 Chinook Spawner Survey data Technical report for Lk WA watershed
- Exhibit No. 24-1     Size comparisons by David Christianson
- Exhibit No. 24-2     Memo from T. Lavender/Email and article titled "Construction Injury and  
Soil Compaction"
- Exhibit No. 24-3     Letter from Braden Allen to Robert Jackson dated April 29, 2002
- Exhibit No. 24-4     Letter to Examiner from L. Casey, DDES dated May 16, 2002/2 attachments
- Exhibit No. 24-5     Letter from Scott Branerd to Braden Allen dated May 9, 2002
- Exhibit No. 24-6     Creekside home setbacks compiled by David Christianson
- Exhibit No. 25       KCC 21A.44, excerpt

Exhibit No. 26	Letter from Scott Branerd to Braden Allen May 17, 2002
Exhibit No. 27	Density calculations with KCC 21.A.030 attached
Exhibit No. 28A	Statement of appeal
Exhibit No. 28B	Notice on Title
Exhibit No. 28C	Deed of Trust/Swanson
Exhibit No. 28D	Various County Records
Exhibit No. 28E	Terra Associates Wetland Evaluation dated February 5, 1999
Exhibit No. 28F	Letter from Karen Walter/Muckelshoot Indian Tribe Fisheries Department to Matthew Caskey dated June 7, 1999
Exhibit No. 28G	Application for Zoning Code Variance and Land use Permits
Exhibit No. 28H	Mr. Christianson's original footprint calculations
Exhibit No. 28I	Bear Creek Basin Map
Exhibit No. 28J	PBRs and Waterways 2000Map on GIS Base
Exhibit No. 29	Bear Creek Basin Map produced by KCDNR, 1999
Exhibit No. 30	GIS map with depicting waterway 2000 acquisitions and properties benefiting from PBRs current use taxation
Exhibit No. 31	Five site plan drawings
Exhibit No. 32	Terry Lavender's written statement entered May 28, 2002
Exhibit No. 33	Elevation measurements of subject properties dated May 20, 2002
Exhibit No. 34-1	Rebuttal Witness List
Exhibit No. 34-2	Email from Mr. Wessel
Exhibit No. 34-3	Topo from Mainline Surveying
Exhibit No. 34-4	Tree Survey
Exhibit No. 34-5	Daylight Rambler elevation
Exhibit No. 34-6	New home survey from Mr. Newell
Exhibit No. 34-7	Submittal request for variance
Exhibit No. 34-8	Similar constructed homes in the neighborhood
Exhibit No. 34-9	Offer to cap square footage of homes
Exhibit No. 34-10	Drainfield designs
Exhibit No. 34-11	WAC & RCW
Exhibit No. 34-12	Pictures of surrounding neighborhood taken by Mr. Newell
Exhibit No. 35	Mr. Newell's written statement dated May 28, 2002
Exhibit No. 36	Tax Assessor records of six neighboring properties
Exhibit No. 37	Department's conceptual site plan
Exhibit No. 38	Statement of qualifications for Laura C. Casey
Exhibit No. 39	Blank notarized affidavit form regarding shoreline management.
Exhibit No. 40	DDES Public Rule regarding KCC 21A.24.222 dated May 4, 2000
Exhibit No. 41	Letter from Randy Newell to Matthew Caskey and Laura Casey dated July 24, 1999
Exhibit No. 42	Letter from Matthew Caskey to Randy Newell dated April 12, 2000
Exhibit No. 43	Unsigned (Newell) letter to Matt Caskey and Laura Casey dated January 10, 2000
Exhibit No. 44	Letter from Randy Newell to Garrett P. Munger dated June 4, 2002 with wetland determination forms attached
Exhibit No. 45	Letter to whom it may concern from Robert S. Julin and Carolyn J. B. Julin dated April 27, 2002
Exhibit No. 46	Adjudicated usual and accustomed fishing places, excerpt from findings of fact
Exhibit No. 47	E-mail from Stanley Roe to Randy Newell dated March 22, 2002