

March 22, 2004

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0012**
Proposed Ordinance No. **2004-0071**

AUBURN PLACE
Preliminary Plat Application

Location: East of 112th Avenue Southeast and approximately 300 feet
north of Southeast 298th Street

Applicant: Auburn Townhomes, LLC,
represented by Shupe Holmberg
Baima & Holmberg Inc.
100 Front Street South
Issaquah, WA 98027-3817
Telephone: (425) 392-0250
Facsimile: (425) 391-3055

King County: Department of Development and Environmental Services,
represented by Fereshteh Dehkordi
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7173
Facsimile: (206) 296-6613

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

EXAMINER PROCEEDINGS:

Hearing Opened:	March 16, 2004
Hearing Closed:	March 16, 2004

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:

- Surface water drainage
- Park access
- Fencing

SUMMARY:

The proposed subdivision of 14 lots on 14.4 acres in the urban area is approved subject to conditions.

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

FINDINGS:

1. General Information:

Owner/Developer: Auburn Town Homes LLC
 Attn: Bill Hughes
 1522 Cedar Grove Road
 Issaquah, WA 98027

Engineer: Baima & Holmberg
 100 Front Street South
 Issaquah, WA 98027
 (425) 392-0250

STR: SE ¼ NE ¼ 5-21-5

Location: Generally east of 112th Avenue SE and approximately 300 feet north of SE 298th Street

Zoning: R-1
 Acreage: 14.4
 Number of Lots: 14
 Density: 1du/acre
 Lot Size: Min 7500 square feet
 Proposed Use: Detached Single Family Residential
 Sewage Disposal: City of Auburn
 Water Supply: City of Auburn
 Fire District: KC Fire District 44
 School District: Auburn School District

Complete Application Date: June 4, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the Hearing Examiner for the March 16, 2004, public hearing are found to be correct and are incorporated herein by this reference. Said report is exhibit no. 2 in the hearing record.
3. The area of this proposed subdivision is divided into two drainage basins. Two detention ponds will be constructed to maintain discharge of surface water from this site at the existing locations. Level 2 flow control is proposed by King County, and agreed to by the Applicant, to mitigate any downstream impacts from the discharge of surface water from this site.
4. Auburndale Two Park, located directly east of the site, is undeveloped. Unauthorized use of the park occurs, including motorbike activity, transient living and shooting. Construction of a direct pedestrian access to this park would create an unsafe condition until such time as the park is developed and activities are adequately monitored. The Applicant has agreed to provide an undeveloped easement that will be available for future use to provide direct access from the lots on the subject property to the park, when the King County Department of Natural Resources and Parks, or its successor agency, determines that development of the access would be appropriate. The Applicant will fully meet the requirements for recreation onsite within proposed Tract F.
5. Residents of properties to the south have requested that a fence be established along the south boundary of the subject property. The property developer has agreed that the establishment of such a fence could be made a condition of final plat approval, notwithstanding that King County does not normally require fencing between like uses.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare, and for open spaces, drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreation, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant on December 10, 2003, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

5. Based upon the Applicant's agreement, conditions requiring an undeveloped pedestrian easement from 114th Avenue Southeast to Auburndale Two Park property, and for fencing along the south property line, can be made conditions of final plat approval.

DECISION:

The preliminary plat of Auburn Place, as revised and received December 10, 2003, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-1 zone classification. All lots shall meet the minimum dimensional requirements of the R-1 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services. As proposed approximately 8.39 acres shall be placed in Open Space tracts. (see KCC 21A.12.030).
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The Applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. The stormwater detention facilities shall be designed to the Level 2 flow control and Basic water quality menu requirements per the 1998 King County Surface Water Design Manual(KCSWDM).
 - b. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

- c. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - d. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - e. The 100-year floodplain for any on-site wetlands or streams shall be shown on the engineering plans and the final plat per Special Requirement #2 of the KCSWDM.
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
- a. Southeast 296th Street shall be improved at a minimum to the urban sub-access street standard.
 - b. One hundred fourteenth Avenue Southeast (114th Avenue SE) shall be improved at a minimum to the urban sub-access street standard. A temporary turn-around shall be provided at the south end of 114th Avenue SE. The northern portion of 114th Avenue SE from the north line of Tract A to the north property line shall be improved to the urban ½-street standard. An access between the south end of 114th Avenue SE and the adjoining private driveway may be provided if desired by the adjoining property owner. If not desired by the adjoining property owner, the fence called for by condition no. 16 shall be continuous across the south end of the temporary cul-de-sac, precluding access between 114th Avenue SE and the abutting private driveway until such time as 114th Avenue SE is dedicated and constructed to the south.

If a provision for access to the above south end of 114th Avenue SE from the adjoining private driveway is provided, improvements shall be approved by DDES.
 - c. FRONTAGE: The frontage along 112th Avenue SE (east side only) shall be improved to the urban collector arterial standard with provision for a bike lane.
 - d. The access tract serving Lots 3 and 4 shall be improved as a joint use driveway per Section 3.01 of the KCRS. Lots 3 and 4 shall have undivided ownership of the joint use driveway and be responsible for its maintenance.
 - e. Modifications to the above road conditions may be considered in accordance with the variance provisions in Section 1.08 of the KCRS.

8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
11. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey markings and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant. There are four wetland areas identified on the site. Wetland B is exempt from the KCC 21A. 24. regulations.

- a. Wetlands A and C as labeled by the Altmann study are classified as Class 2 wetlands. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. Wetland D is classified as a Class 3 wetland. Class 3 wetland(s) shall have a minimum buffer of 25 feet, measured from the wetland edge.
- c. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- d. Buffer averaging may be proposed, pursuant to KCC 21A.24.320,-provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- e. A minimum building setback line of 15 feet shall be required from the edge of the tract.

- f. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The Applicant shall demonstrate compliance with these items prior to final approval:

A four-foot tall split rail wood fence shall be constructed along the edge of the sensitive Area Tracts A, C and D. The fencing need not be along the entire boundaries of tracts A and D, only along the common boundaries of these tracts and the proposed lot 14. Alternatively, a fence can be placed along the south boundary of Tract D and continued along the north and east boundaries of lot 14 adjacent to tract A.

Fencing details, construction and location shall be shown on the engineering plans for DDES review and approval. This mitigation is intended to reduce disturbance within the protective buffer and associated wetland.

- g. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

- 12. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children’s play equipment, picnic table[s], benches, etc.).

- a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, landscaping as required by KCC 21A.16 and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.

Because the site is adjacent to Auburndale Two Park, the Applicant shall include a pedestrian easement for an undeveloped trail access from 114th Avenue SE to the park site as a separate recreation tract.

- b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Department of Natural Resources and Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
14. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.

- f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The Applicant shall contact Metro Service Planning at 684-1622 to determine if 112th Avenue SE is on a bus route. If it is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
 - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
15. To implement KCC 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of KCC 21A.38.230, as well as the conceptual tree retention plan which is part of the hearing record for this project. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC 21A.38.230B4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to KCC 21A.38.230B4d(2).
- A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with KCC 21A.38.230B6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)
16. The developer shall provide a 4-foot high cedar, or comparable, wood fence along the south boundary, except for portions of the boundary within sensitive area tracts. Any fencing proposed within sensitive area tracts must be approved by the DDES wetlands ecologist.

ORDERED this 22nd day of March, 2004.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED this 22nd day of March, 2004, to the parties and interested persons of record:

Ty Amant
29206 - 112th Ave. SE
Auburn WA 98092

Auburn Townhomes LLC
15220 Cedar Grove Rd.
Issaquah WA 98027

Baima & Holmberg, Inc
100 Front Street South
Issaquah WA 98027

Jerry Ellingsen
29320 - 112th Ave. SE
Auburn WA 98092

Robert C. Legrande
29706 - 112th Ave. SE
Auburn WA 98092

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29226 - 118th Ave. SE
Auburn WA 98092

David Ross
Auburn Town Homes LLC
P.O. Box 447
Hobart WA 98025

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29415 - 118th Avenue SE
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Steve Townsend
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Larry West
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Geo Review
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Prel. Review Engineer
MS OAK-DE-0100

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 \$250.00 (check payable to King County Office of Finance) ***on or before April 5, 2004***. 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 April 12, 2004***. 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 Courthouse, 516 3rd Avenue, Seattle, Washington 98104, 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 MARCH 16, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0012.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Bruce Whittaker and Kristen Langley, representing the Department; and Shupe Holmberg and Bill Hughes, representing the Applicant, and Bob LeGrande, Ilona Toomb, Lynn LeGrande.

The following exhibits were offered and entered into the record:

- | | |
|----------------|---|
| Exhibit No. 1 | DDES file no. L03P0012 |
| Exhibit No. 2 | DDES preliminary report to the Hearing Examiner, dated March 16, 2004 |
| Exhibit No. 3 | Application for Land Use Permits – Formal Subdivision, received May 7, 2003 |
| Exhibit No. 4 | Environmental checklist, prepared April 8, 2003 |
| Exhibit No. 5 | SEPA Mitigated Determination of Non-significance, dated January 30, 2004 |
| Exhibit No. 6 | Affidavit of posting indicating a posting date of June 30, 2003, received by DDES on July 3, 2003 |
| Exhibit No. 7 | Revised site plan, received December 10, 2003 |
| Exhibit No. 8 | Assessor's maps (2) NE 5-21-5 and SE 5-21-5 |
| Exhibit No. 9 | Level 1 Downstream Drainage Analysis by Baima & Holmberg, dated October 7, 2003 |
| Exhibit No. 10 | Revised Level 1 Downstream Drainage Analysis, dated December 9, 2003 |
| Exhibit No. 11 | Conceptual Drainage Plan, received December 10, 2003 |
| Exhibit No. 12 | Wetland Delineation Report by Altmann Oliver Assoc., LLC, received September 4, 2003 |
| Exhibit No. 13 | Condition no. 15 regarding significant tree retention |