

CITY OF SHORELINE

JOINT PLANNING COMMISSION/HEARING EXAMINER SUMMARY MINUTES OF REGULAR MEETING

September 20, 2007
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

COMMISSIONERS PRESENT

Chair Piro
Vice Chair Kuboi
Commissioner Wagner
Commissioner Phisuthikul
Commissioner Harris
Commissioner Hall
Commissioner Broili
Commissioner Pyle

STAFF PRESENT

Paul Cohen, Senior Planner, Planning & Development Services
Ronald Moore, Deputy City Clerk
Flannary Collins, Assistant City Attorney
Jessica Simulcik Smith, Planning Commission Clerk

HEARING EXAMINER PRESENT

Anne Watanabe

COMMISSIONERS ABSENT

Commissioner McClelland

CALL TO ORDER

Chair Piro called the joint Planning Commission/Hearing Examiner meeting to order at 7:02 p.m.

ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Piro, Vice Chair Kuboi, Commissioners Broili, Hall, Harris, Phisuthikul, Pyle, and Wagner. Commissioner McClelland was excused.

PUBLIC HEARING REGARDING 6-LOT SUBDIVISION APPLICATION FOR PROPERTY LOCATED AT 14521 – 11TH AVENUE NORTHEAST (FILE NUMBER 201584)

Chair Piro reviewed the rules and procedures for the public hearing and explained how the joint hearing would work. He advised that the Hearing Examiner would hear the SEPA appeal, and the Commission would accept public testimony and make a recommendation regarding the 6-lot subdivision application. He specifically noted that the public hearing would remain open to accommodate the SEPA portion of the hearing. Regardless of the outcome of the Planning Commission's action, staff would wait until the

hearing examiner issues her findings and decision before forwarding the Commission's recommendation to the City Council.

Open Public Hearing

Chair Piro opened the public hearing. He reviewed the Appearance of Fairness rules and invited Commissioners to disclose any communications they might have received regarding the subject of the hearing outside of the hearing. None of the Commissioners identified ex parte communications. No one in the audience expressed a concern, either.

SEPA Appeal to Hearing Examiner

Anne Watanabe advised that she was present as the Hearing Examiner for the City of Shoreline. She reiterated that the appeal portion of the hearing (filed by Paramount Park Neighborhood Group) would remain open. She explained that pursuant to a pre-hearing conference that was held with the parties, the full evidentiary hearing on the matter would be held on October 1st at 9 a.m. The hearing would be open to the public, although the parties would be the representatives and only witnesses called by the parties would be permitted to testify at that time.

Ms. Watanabe invited the party representatives to introduce themselves. The following individuals introduced themselves: Flannery Collins, Shoreline Assistant City Attorney; Brian Derdowski, appellant representative, the Paramount Park Neighborhood Group; Jan Stewart, an appellant, and Gary W. East, applicant representative.

Ms. Watanabe advised that because the evidentiary hearing would occur on October 1st, this portion of the SEPA hearing would be brief. She recalled that at the pre-hearing conference, she asked that each party be prepared to submit their final witness and exhibit lists now.

Mr. Derdowski advised that the appellants have prepared their partial list of exhibits and witnesses, updated as of September 20th. All of the witnesses are confirmed to attend. He noted they submitted their original list on September 17th, a number of additional exhibits and several additional experts were listed. He indicated that a copy of the list was not provided to the applicant or the City Attorney. Ms. Watanabe indicated that she would provide a copy of the list to the other two parties. She emphasized that she considers the appellant's list of exhibits and witnesses to be complete. Mr. Derdowski said they believe the list is complete, but the requirement for an open record hearing suggests that if a reasonable case could be made on the date of the hearing that an exhibit should be furnished, then they reserve the right to do that, subject to Hearing Examiner's approval. Ms. Watanabe observed that if an exhibit or witness is not on the list and there is no good reason for adding to the list, she would not likely permit the addition. Ms. Collins indicated that she also refined her list of exhibits to include two more documents, and Mr. East indicated the applicant would not submit a list of exhibits and witnesses.

Mr. Derdowski recalled that at the pre-hearing conference, he requested that City staff provide several documents. He also requested that the City make certain staff individuals available for the hearing. At the conclusion of the pre-hearing conference, City staff suggested that the most reasonable approach

would be for them to identify the issues they would like represented, and the City would provide the appropriate person. This would avoid the complication of a subpoena process. He specifically asked that the following staff members be available at the hearing: the SEPA responsible official, the person who did the traffic review or concurrency analysis, the person who did the geotechnical analysis, the planner who reviews applications and compares them to code requirements, the person who reviewed the drainage plans, and the person who would be responsible for code enforcement and has specific knowledge about the code enforcement violation they believe is still open on the site. He also requested that City staff provide the following information: the applicable codes and drainage requirements, the latest traffic counts and traffic concurrency analysis for the area, a copy of the code enforcement file that pertains to the site, and a list of who the SEPA notice was mailed to.

Ms. Watanabe asked the Deputy City Clerk, Mr. Moore, to make copies of the appellant's list and provide a copy to each party. She said she would treat the appellant's list as a request, and invite the City staff and applicant to review the list and provide their response to her in writing.

Mr. East referred to his notes from the pre-hearing telephone conference that was held. His understanding was that tonight the appellants would provide their final list of witnesses and exhibits and a brief summary of the testimony expected from each witness. He also recalled that the applicant would have until September 27th to respond to the appellant's submittal. Ms. Watanabe said her understanding was that all parties would present their final witness and exhibit lists tonight. She said she had hoped to see some indication of the duration of each of the witness presentations, but the list does provide a general indication as to the subject matter each would address. She asked that the responding parties identify any objections they might have regarding the appellant's lists within one week.

Mr. East recalled that at the pre-hearing conference he raised a question about what information was going to be supplied and the substance of that information. He said he came away with the sense that, by tonight, all reports from the appellant's expert witnesses would be provided. Ms. Watanabe clarified that unless the appellant intends to present a report at the hearing, she would not require their experts to generate a report for purposes of pre-hearing preparation. However, any report that an expert wishes to offer should be on the list of exhibits. They could certainly discuss the option of requiring pre-hearing disclosure of all exhibits, if that is what the applicant desires.

Ms. Watanabe adjourned the SEPA portion of the hearing until October 1st at 9 a.m.

Testimony to Planning Commission

Chair Piro questioned if the Commission would want to know the outcome of the SEPA appeal before making a final recommendation to the City Council. If that is the case, they could continue the public hearing to a future date. Any motion to continue the meeting should clearly identify who would be allowed to address the Commission at the continued hearing. Commissioner Broili said he would be amenable to allowing citizens who participate in tonight's public hearing to provide additional testimony at the continued hearing, as long as the information provided was new and not just a repeat of what was said at the first public hearing. Chair Piro concurred. The Commission agreed to make this decision later in the hearing.

Commissioner Pyle reviewed that tonight's hearing is a combined hearing, as required by State law. He asked what would happen to the process if the Hearing Examiner finds in favor of the applicant and a further appeal is filed. Ms. Collins answered that an appeal of either the Hearing Examiner's decision regarding the SEPA appeal or the City Council's decision regarding the subdivision application would go to Superior Court. She noted that an appeal of the SEPA decision would have to be accompanied by an appeal of the subdivision action. Commissioner Pyle requested information about how keeping the hearing open until the Hearing Examiner has issued a finding and decision on the SEPA appeal would impact the recommendation of the subdivision approval. Ms. Collins explained that the Commission could make a recommendation on the subdivision application prior to the Hearing Examiner issuing a decision on the SEPA appeal. However, continuing the hearing and postponing their recommendation to a later date would also be an appropriate action. She emphasized that the Hearing Examiner's decision would not be impacted by the Commission's recommendation related to the subdivision application.

Mr. Cohen, project manager, presented the staff report for the preliminary formal subdivision application known as the Plateau at Jackson. The proposal is for a 6-lot subdivision, including a critical area tract and a vehicle access tract. The subject property is located at 14521 – 11th Avenue Northeast. He referred the Commission to the detailed information that was provided in the staff report. He explained that when preliminary short plat or subdivision applications are reviewed by staff, they require a lot of information to help them determine whether or not the proposal is feasible. However, they recognize that more details would be provided as part of the building permit application when and if a subdivision is approved.

Mr. Cohen advised that the public hearing was originally noticed for August 2, 2007, but the hearing was rescheduled as a result of the SEPA appeal so that the two items could be heard together. He noted that the application was not deemed complete until November 13, 2006, and the SEPA Determination of Nonsignificance was issued on July 5, 2007.

Mr. Cohen provided a map to illustrate the subject property, which is 1.59 acres in size. He advised that Paramount Park is located to the north of the subject property, along with two single-family residential homes. To the south of the subject property is Northeast 145th Street and Jackson Golf Course in the City of Seattle. The neighborhoods to the east and west are developed with single-family detached residences, with the exception of a triplex adjacent to the corner of the site. He noted that the house that was originally on the site was demolished in 2005, and the lot is now vacant. There are some other minor structures on the site. He explained that the northwest corner of the site slopes steeply down in a northwesterly direction, and more gently down in an easterly direction. Mr. Cohen reported that there are 132 significant trees on the site, as well as steep slope critical area. A portion of the buffer setback requirement from the stream falls within the subject property, as well.

Mr. Cohen announced that five public comment letters were received regarding the application. He referred to Page 5 of the Staff Report, which lists the range of issues that were raised by the public. The issues of concern include:

- Impacts on the existing bus stop on Northeast 145th Street.
- The outfall into Little's Creek requiring a hydraulic project approval permit.
- Traffic safety due to increased traffic.
- Access for fire department vehicles.
- Inadequate amount of parking provided.
- Protection of critical areas.
- Potential encroachment of private yards and uses into Paramount Park.
- Drainage issues, including flooding, pollution and erosion.
- Stability of the steep slopes.
- Buildable area of lots after grading.
- Impact on wildlife and inadequate listing of species on the SEPA checklist.

Mr. Cohen advised that the staff responded in detail to each of the issues raised by citizens on Page 6 of the Staff Report.

Mr. Cohen displayed a site plan (Attachment A of the Staff Report) for the proposed subdivision. He explained that the applicant is proposing to divide the subject property into six lots, including an access tract in the middle. Tract A was also included in the plan to provide protection for the critical areas and their setback buffers from the top of the steep slope and the stream. The tract area would also include a stormwater detention and water quality vault. In addition, rear and front yard setbacks from the tract line have been identified. He noted that the steep slope was not included in the critical area tract because it was cut as a result of putting Northeast 145th Street through the area. Mr. Cohen explained that if there were no critical areas on the site, the applicant would potentially be able to subdivide the property into 10 lots. They are proposing six buildings sites, with 19,000 square feet dedicated to Tract A to accommodate the critical area. The access tract would be an additional dedication.

Mr. Cohen advised that when reviewing the proposed application, staff considered the subdivision review criteria found in the Development Code. The criteria deals with issues such as environment, lot layout, dedications, improvements and public health safety and general welfare. He referred to staff's analysis of each criteria, which was provided in the Staff Report starting at the bottom of Page 7. He said staff has concluded the proposal does meet all the criteria. He specifically noted the following:

- The City's minimum lot size requirement in the R-6 zone is 7,200 square feet. Five of the proposed lots would be at or near this minimum requirement, and one would be quite a bit larger (19,000). All six of the lots would meet the minimum dimension and setbacks requirements, as well.
- Based on the geotechnical report, staff believes it would be appropriate to allow for a reduction in the buffer area to the minimum required.
- There are about 132 significant trees on the site, and the applicant would be required to retain at least 20 percent of them. Staff believes this would be doable, and the site development permit would ensure the requirement is met. Any trees that are removed must be replaced at a specified ratio.
- The proposed access and parking plan would be adequate for access in and out to address site distance requirements in both directions on Northeast 145th Street. Even though there would be a fair amount

of grading to provide access into the lots, each one would have the standard minimum two-car parking area.

- The proposal could be accommodated by the existing City infrastructure including water, sewer, fire protection, police protection, etc.

Mr. Cohen said that where staff did not feel the proposal adequately met the criteria, they used conditions to reiterate that the issues would be addressed as part of the site development permit process. Sometimes this can be redundant and the conditions can be quite lengthy. However, the conditions would be used to remind the developer and property owner what the City expects and to remind the concerned neighbors that the City fully intends to follow through on their development standards.

Mr. Cohen concluded that staff recommends approval of the proposed subdivision application with the conditions found in Attachment P of the Staff Report. He summarized each one as follows:

1. The project would include one private access/utility tract, one private critical area protection tract and a maximum of 6 buildable lots shall be created.
2. No buildable lot would be allowed direct access onto Northeast 145th Street, which is consistent with what the applicant has proposed.
3. A geotechnical report would be required prior to the City issuing a site development permit to make sure they are certain about how sanitary and stormwater drainage is handled through Tract B.
4. The City would require a continuous 6-foot high solid or chain link fence along the northeast property corner. This addresses citizen concerns about no access be provided from the development into Paramount Park.
5. Trees on the steep slope along Northeast 145th Street must be retained. The services of a certified arborist report would be required, and the applicant must ensure that slope stability would be maintained.
6. All buildings would have to be set back a minimum of 5 feet from the top of the exempt steep slope parallel to Northeast 145th Street.
7. If the King County Metro bus stop on Northeast 145th Street is impacted, the applicant would be required to reestablish the standards of King County Metro.
8. The west side of the private street would be posted as a fire lane where parking would not be allowed.
9. The developer must provide ADA-compliant pedestrian pathways connecting with the existing public sidewalk on Northeast 145th Street.
10. The developer would be required to obtain a site development permit from the City.
11. Prior to issuance of a site development permit, the applicant would be required to obtain a hydraulic project approval permit from the Washington State Department of Fish and Wildlife for the proposed stormwater outfall into Little's Creek.
12. A right-of-way permit would have to be reviewed and approved by the City for any installation of utilities and other improvements in the rights-of-way.
13. The application would be required to comply the conditions established by the November 9, 2006 Shoreline Water District Certificate of Water Availability.
14. The application would be required to comply with the conditions established by the October 6, 2006 Ronald Wastewater District Certificate of Sewer Availability.

15. The applicant must provide assurance that all the improvements and tree replacements would be completed. This would include a 2-year landscape maintenance and replacement agreement.
16. Prior to occupancy, field markings for Tract B must be installed and approved by the City. This involves signage along the critical area boundaries to let people know of the critical area and that no dumping, cutting, etc. would be allowed.
17. All new development must be served with underground power with separate meters for each unit.
18. Prior to recording of the final plat, the applicant must prepare a document to remove the existing 20-foot right-of-way easement on the east side of the site. This is currently a private easement between the property owner and the City. The City has no desire to use the easement, so it would be removed as part of the project.
19. Prior to recording the final plat, survey monuments and lot corners must be placed in accordance with recognized good practice in land surveying.
20. The exact square footage of each lot shall be recorded on the final plat.
21. All address shall be recorded on the final plat.
22. A Declaration of Covenant and License for Stormwater Flow Control Best Management Practices must be recorded with the final plat.
23. A Joint Maintenance Agreement for the private street and stormwater flow control system must be shown on the final plat and recorded separately with a cross-reference to each lot in the subdivision so that future owners are responsible for maintenance and repair of those facilities.
24. Notes must be added to the face of the final plat to clarify the uses of Tract A and B, the trees along Northeast 145th Street. A note must also be added stating that any further proposed subdivision or adjustment to the lot lines within the plat must use all lots of the plat for calculation of the density and dimensional requirements of the Shoreline Municipal Code.

Commissioner Phisuthikul pointed out that the grading map that was used in Mr. Cohen's Power Point presentation was not included in the Staff Report. The grading map that was included in the Staff Report did not identify any grading for the access areas. He expressed concern that grading for the roadway access and utility improvements could alter the existing topography and result in a greater percentage of steep slope on the property after development. Mr. Cohen said this issue was raised by neighbors, as well.

Commissioner Pyle noted there is currently a City right-of-way on the eastern boundary of the existing lot. Mr. Cohen said this area is labeled as a private road (11th Avenue Northeast), but it's actually a City access easement on a separate tract. There is no City right-of-way in this location.

Gary West, representative for the applicant, indicated he would not be providing any further presentation to the Commission.

Chair Piro noted that many of the citizen comments related to traffic at the access point on Northeast 145th Street. He asked if any thought was given to providing access from 10th Avenue Northeast. Mr. Cohen said it is important to provide access to the site from the roadway that has the most capacity, which is Northeast 145th Street. Because it is located within the critical area buffer and stream setback, property owners who use the dirt road (10th Avenue Northeast) indicated they did not want

improvements that would require cutting through the slope. Because of these concerns, most people indicated they were comfortable with access from Northeast 145th Street, instead.

Commissioner Phisuthikul inquired if consideration was given to using 11th Avenue Northeast as an access rather than adding another access point just a few feet away. Mr. Cohen said he doesn't know if this was considered by the applicant, but concern was expressed by the neighbors that extending the 11th Avenue Northeast access all the way to the north end of the property to connect with Paramount Park would encourage encroachment into the park. Commissioner Phisuthikul said that because the proposed access is so close to 11th Avenue, perhaps the access points could be combined to result in safer conditions. Mr. Cohen said he would have to research the option further before providing a more thorough answer to the Commission.

Commissioner Hall asked if the City would typically pay a property owner to obtain a public access easement across already developed private property in order to access a park. Mr. Cohen answered that if the City requires a right-of-way dedication, it would typically be given to the City by the private property owner. Ms. Collins said the City typically tries to get property owners to donate the easement property, as well. Commissioner Hall inquired if it would impact the proponent's ability to develop the land if the easement were to remain in its existing location and a trail or path were developed to Paramount Park. Mr. Cohen said he would need time to review the concept before providing an answer to this question.

Commissioner Hall questioned if there should be a fair market value associated with the easement. If it were an existing right-of-way or a road, vacation would require a legislative action. Because it is an easement, the City can agree to give it away. However, he suggested the City should consider whether the easement should be paid for rather than given to the applicant.

Commissioner Hall asked why the applicant is proposing a private road instead of a public road. He asked staff to review the differences, especially as it pertains to things like sidewalks and other street improvements. He recalled the Planning Director assured the Commission that sidewalks would be required whenever privately owned land is divided and/or new homes are constructed. He asked why the subject proposal would not require sidewalks on both sides of the private road. Mr. Cohen answered that the City does require sidewalks on both sides of private roads with any new development. However, depending on the length of the road, the code sometimes allows developers to construct sidewalks on only one side of a proposed private road. Commissioner Hall said he would not necessarily be opposed to allowing sidewalks on just one side of the proposed private road. However, when reviewing development code updates in the future, the Commission should consider whether they want to require the same frontage improvements for private roads as those required for public roads.

Commissioner Hall referred to the bluff on the south side of the subject property and asked how tall the slope was. Mr. Cohen answered that it is over 20 feet tall at its peak. Commissioner Hall noted that staff concluded a 5-foot setback from the break of the slope would be sufficient. Mr. Cohen said this decision was based mostly on the geotechnical report. Commissioner Hall inquired if a licensed professional engineer reviewed the geotechnical plan and concurred with the staff's decision. Mr.

Cohen answered that the applicant was required to submit an engineered geotechnical report, and the City's licensed engineer would review the report and provide a recommendation to staff.

Commissioner Broili agreed with Commissioner Hall's point regarding the easement and access from 11th Avenue Northeast. He asked what protections would be offered for the critical area to the west and north after the development has been completed. Mr. Cohen noted one condition would require a fence in the northeast corner of the subject property to prevent access to the park. In addition, the City would typically require a type of split rail fence and a sign to identify the site as a critical area protection easement tract. The sign would not prohibit people from accessing the site, but it would prohibit cutting, dumping, etc. He suggested the requirement could be reiterated as a condition of approval.

Commissioner Pyle asked if the City has standards for fence detail and design. He noted that a wooden fence would prevent small mammal and amphibian movement across the landscape. He questioned if the City could require the developer to leave a gap at the bottom or spacing in the fence to allow small animals to continue to move freely throughout the landscape. He noted that this area has a connection to an aquatic environment. Mr. Cohen said that if the Commission feels it appropriate, they could address this concern as a condition of approval.

Commissioner Pyle said one of the criteria stated on Page 8 of the Staff Report says, "The proposal shall be designed to minimize grading by using shared driveways and by relating street, house site and lot placement to the existing topography." He said he doesn't know if the applicant has considered potential alternatives to the proposed design, but he does not feel the proposed roadway would be consistent with the criteria based on the amount of cutting and grading that would be required. Mr. Cohen referred to an illustration depicting the grading that would be required for the access easement. He explained the criteria requires that an access be designed to minimize grading and does not mean no grading could occur. The proposed design was intended to get the most number of lots, provide direct access to the road, minimize the amount of grading necessary, and avoid the steep slopes to the north, west and east. The applicant's goal was to obtain the shortest road necessary to access the lots, without requiring a lot of roadwork on the interior of the site. Even though the proposed access would make some of the lots on the west side of the road access steeper, staff felt there would still be buildable room for the houses and driveways. Staff believes the proposed plan would minimize the amount of grading required.

Commissioner Pyle expressed his belief that if the access came in on what is current 11th Avenue Northeast and then hooked around on the site, it appears the developer could retain the existing topography and still place six homes on the site. Excavation might still be required for purposes of constructing each home, but it would not require massive cuts for the purpose of a roadway. He suggested the applicant conduct an LID study to identify the quantity difference in the amount of required cut and fill based on different access options. Commissioner Phisuthikul referred to the Site and Exploration Plan found on Page 97 of the Staff Report, which shows that a natural access to the properties is already available along the east side of the property. There would be no need for an additional access just a few feet away, particularly if it would require cutting through a steep slope. Commissioner Phisuthikul asked if a steep slope analysis of the property has been done to identify the grade percentages throughout the site. He said that sometimes steep slopes are exacerbated by the cut

and fill that occurs during development. Mr. Cohen stated that a steep slope analysis has not yet been done to the degree described by Commissioner Phisuthikul.

Commissioner Pyle said he understands the difficulties associated with development of the site. He commended the applicant for attempting to find a solution to address all of the issues. He asked how impervious surface for the properties would be measured, given there is a 50% limit on impervious surface per lot. Would this be measured on the gross lot area prior to division or based on per lot measurements after the division has occurred? Mr. Cohen answered that the impervious surface area would be measured for each lot after the division has occurred.

Commissioner Pyle said he read through the geotechnical report, which does not conclude with a finding of recommendation. It simply states there is a low probability for failure. He questioned if the City Engineer feels comfortable with the report's finding, given that no formal recommendation was made.

Dennis Lee, Shoreline, referred to the geotechnical report that was provided in the Staff Report. He expressed his concern about the existing soil conditions and whether or not they are stable. He suggested additional geotechnical analysis should be required. He said he doesn't trust detention systems because they tend to fail over time. Mr. Lee reminded the Commission that the City adopted a Comprehensive Plan in the early 1990's, but it is now out of date for all parts of the City. He suggested the Comprehensive Plan should be thoroughly reviewed to take into account all of the changes that have occurred over the past 15 years. He further suggested that because the subject site is a fairly large piece of property with many sensitive areas, it might present an appropriate location for the construction of small houses on small lots. Again, he expressed his belief that the Comprehensive Plan is out of date and there needs to be interim development controls, short plat moratoriums, or whatever it takes to get the City to address the problems. The City's housing goals have changed, and there is currently a shortage of affordable housing.

Brian Derdowski said he was present to represent the Paramount Park Neighborhood Group. He expressed concern about staff's direction that the Commission could forward their recommendation to the City Council on the plat application before the SEPA issues have been resolved. He emphasized that the purpose of the SEPA statute is to inform decision making officials, and the Planning Commission is part of that process. He suggested it would not be prudent for the Commission to close themselves off from the content and details of what's happening in the SEPA record when making a recommendation on the plat application. Many of the issues the Commission has raised are common with the issues raised in the SEPA appeal. They have numerous expert witnesses who would testify that the City's environmental review was insufficient, and the content of this record should be used by the Commission to make an informed decision, regardless of what the Hearing Examiner decides with respect to special conditions.

Mr. Derdowski announced that the Paramount Park Neighborhood Group and the applicant are heavily engaged in a settlement, and the two parties are getting along quite well at this point. They are working hard to develop some voluntary SEPA conditions, and they hope to have this process concluded in a timely manner so the appeal hearing would no longer be necessary.

Mr. Derdowski said the neighborhood group believes it would not be a good idea to trade a publicly owned road easement for a private road that does not meet public standards, and compensation should be provided by the applicant. He explained that the applicant wants this easement property in order to have sufficient property to create two extra lots. Vacating the easement, moving the road, and cutting further into the slope, would make the site distance problems even more problematic. In addition, Mr. Derdowski expressed concern about the utility corridor that is proposed to go down the slope and to the creek. He suggested it would make more sense to run drainage to the existing pipe rather than piping it to the steep slope. He concluded that the neighborhood group does not believe the applicant has exhausted all of the options for providing utilities, and running the utilities down the slope would be a formidable job. He suggested this should be avoided, if possible.

Mr. Derdowski said the neighborhood group believes there is currently an open code enforcement case (illegal clearing and illegal wall) on the site and adjacent to the site. While a different owner did this work, it would be wrong to reward a developer for code enforcement violations by offering a free easement. He summarized that the neighborhood group has major issues with the easement proposal and the site distance. He welcomed the Commission's earlier request for a more detailed topographical map since there are steep slopes on the interior of the site. He recommended the Commissioners visit the site before forwarding a recommendation to the City Council. He pointed out there is a steep slope on the property, with a house lying right beneath it. To allow a less than 50-foot setback from the slope for that portion of the site would be imprudent and very risky.

Mr. Derdowski noted that because the SEPA Hearing was rescheduled for October 1st, many neighbors decided not to attend the short plat hearing. He reminded the Commission that many expert witnesses would provide technical and substantive information related to the SEPA appeal that would help the Commission make a more informed recommendation regarding the short plat application. He urged the Commission to consider allowing the public to testify regarding the SEPA Determination and the short plat application at a continued hearing later in October. The SEPA hearing would be completed by that date, and the public could raise plat issues that were not appropriate to raise at the SEPA hearing. He said he was not prepared to testify about the plat proposal because he fully anticipated a separate opportunity to talk about the plat.

Commissioner Wagner questioned under which jurisdiction the ownership of Northeast 145th Street is. Mr. Derdowski said the City has the authority to require the applicants to provide safety improvements on Northeast 145th Street, which would require them to obtain approval from the State. He noted there would be up to 80 extra trips per day on the street as a result of the proposed short plat. He suggested if the Commission believes this could result in a safety problem, they have a responsibility to address the issue rather than relying on the State to do so. He noted a large utility pole would be in the way of anyone trying to turn, and site distance over the hill would also present a major issue. He said it would be wrong for the City to allow a critical area variance so the utility corridor could go down a cliff merely because the applicant doesn't want to work with the State.

Again, Mr. Derdowski summarized that the neighborhood group is currently negotiating with the applicant and his representatives, and they are hoping to end up with a good, clean settlement that would

improve the public interest. Then the Commission would be left to deal with the plat issue on their own. But there would be a clear and balanced record for them to use when making their decision.

Commissioner Wagner asked staff to share their comments about why they are not proposing to require the applicant to run the utilities along the existing utility easement on Northeast 145th Street instead of the critical area. Mr. Cohen said staff is not prepared to comment on this issue, but they would research the matter and provide further comment to the Commission at a future meeting.

Commissioner Pyle asked if Northeast 145th Street is King County or State right-of-way. Mr. Derdowski answered that it is a State route. Mr. Derdowski reminded the Commission that he previously served on the King County Council, and it was common place for the County to require developers to do improvements associated with State highways as part of the approval conditions for a County project.

Commissioner Hall asked if Mr. Derdowski received notice of the hearing. Mr. Derdowski answered affirmatively. Commissioner Hall asked if staff gave any indication to members of the public that the Commission would not be holding a public hearing tonight. Mr. Cohen answered negatively. He noted the site was notified, and mailings were sent out to parties of record and the original mailing list. Commissioner Hall noted that when the application was originally scheduled for a public hearing in August, staff went to the trouble of noticing the cancellation of the meeting so everybody would know of the change. He asked if any cancellation notice or other notice was mailed out to indicate the Commission would not take testimony. Again, Mr. Cohen answered negatively. Commissioner Hall summarized that while the Hearing Examiner may have bifurcated the case, everyone had notice the Commission would be holding a plat meeting tonight. Mr. Derdowski said he received a number of phone calls from people indicating that when the SEPA hearing was rescheduled, they assumed the plat hearing would be too. The neighborhood group couldn't imagine any circumstance in which the Planning Commission would deliberate and make a decision prior to resolution of the SEPA appeal.

Gary W. East said he was present to represent the applicant. He explained that as a result of the pre-hearing conference that was held with the Hearing Examiner, he came away with the same impression Mr. Derdowski previously outlined. They intended to show up at the hearing, briefly announce their plans to proceed, and then leave until the continued SEPA hearing. He said he advised the applicant and some of their engineers that they did not need to come to this hearing.

Continuation of Public Hearing

COMMISSIONER HARRIS MOVED THE COMMISSION CONTINUE THE PUBLIC HEARING TO THURSDAY, NOVEMBER 1, 2007. COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Hall said he would support extending the hearing in order to allow all interested members of the public to participate. However, it was inappropriate for the applicant and appellant to assume that a properly noticed public hearing before the Commission would not take place. The Commission had every authority to make their decision tonight. The SEPA appeal is a procedural

appeal of State law, and the Planning Commission is appointed by the City Council to advise them on land use and planning issues. To think that an administrative appeal suggests people shouldn't bring information before the Commission makes it impossible for them to do their job. They want to represent the citizen of the community, including applicants who bring forward proposals and appellants who are representing large numbers of individuals who care about the area. The only way they can do their job is for people to present the necessary information to them.

Mr. Cohen said he would prepare to provide a response to the issues raised by the Commission at the continued hearing on November 1st.

Ms. Collins clarified that the code enforcement case is related to a separate property, and the owner is not involved with the current subdivision. She cautioned that this issue should be kept separate from the SEPA appeal and short plat application.

Commissioner Hall observed it is important for everyone to recognize that the Planning Commission's ultimate recommendation could be to deny the application, approve the application or approve the application with staff conditions and any other conditions of their own findings. He cautioned the SEPA appeal conditions are only part of the plat application. The 24 conditions proposed by staff must be reviewed and considered by the Commission, as well.

THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Commissioner Piro reminded the Commissioners to provide their comments related to the Fircrest Proposal. Chair Pyle recalled that this issue was discussed at the Commission's September 19th agenda. He noted the combined City Council/Planning Commission meeting on September 24th would be devoted exclusively to that topic.

The meeting was adjourned at 8:44 P.M.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission