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City of Woodinville

BEFORE THE HEARINGS EXAMINER  
FOR THE CITY OF WOODINVILLE

In the Matter of the Application of	)	NO. PPA2004-104
	)	(Georgian Heights Phase 4)
<b>Lakewood Construction Inc.</b>	)	
<b>Randolph Cherewick</b>	)	FINDINGS, CONCLUSIONS
	)	AND DECISION
For a Preliminary Plat	)	
<u>and Reasonable Use Exception</u>	)	

SUMMARY OF DECISION

The request for approval of a preliminary plat to subdivide 19.22 acres of land into 51 single-family residential lots<sup>1</sup> and a reasonable use exception for the placement of water and sanitary sewer lines within a Class II wetland is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request:

Lakewood Construction Inc. (The Applicant), through their agent Randolph Cherewick, requested approval of a preliminary plat to subdivide 19.22 acres of land into 51 single-family residential lots. The preliminary plat application was submitted to the City of Woodinville on December 29, 2004. The Applicant also requested a reasonable use exception in order to place water and sanitary sewer lines within the wetlands located on the property. The subject property is in the northwest quadrant of the City of Woodinville, in an area known as the "Wedge Neighborhood," and is just west of the Georgian Heights Subdivision Phase 3 (constructed between in 2004 by the same developer). The property is bordered by NE 205<sup>th</sup> Street to the North and Woodinville High School to the South. The subject property is identified by King County Tax Parcel Number 0326059011.

Hearing Date:

An open record hearing on the request was held before the Hearings Examiner for the City of Woodinville on May 12, 2005.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

1. Mr. Dick Fredlund, Professional Planner, City of Woodinville
2. Mr. Randolph Cherewick, authorized agent for Lakewood Construction

Exhibits:

At the open record hearing the following exhibits were admitted as part of the official record:

<sup>1</sup> The total number of authorized lots is contingent on the Woodinville City Council's decision regarding the maximum number of residential units served by a private road.

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1. Staff Report;
2. Preliminary Plat Application;
3. Letter of Completed Application;
4. Published Notice of Application with Comment Period;
5. Affidavit of Site Posting for Notice of Application Exhibit;
6. Consistency Check List;
7. Northshore School District School Walk Safety Assessment;
8. Density Calculations;
9. Vicinity Map;
10. Title Report;
11. Preliminary Subdivision Plat Map;
12. Combined Utility Plan;
13. Preliminary Road Profiles and Sections;
14. Landscape and Preliminary Tree Preservation Plan;
15. Environmental Checklist;
16. SEPA Determination (SEP2004-046);
17. 1988 Wetlands High School Annex Wetlands Assessment Report, prepared by Raedeke Associates Inc.;
18. Stormwater and Technical Information Report;
19. Sanitary Sewer and Municipal Water Certification
20. Traffic Impact Analysis;
21. WSDOT Letters on SR-522 traffic impact (Awaiting Letter);
22. Notice of Public Hearing;
23. Affidavit of Posting;
24. Deviation from Standards Request/Response;
25. Georgian Heights Phase 4 Wetland and Stream Mitigation Plan;
26. Transportation Impact Fee Calculation Worksheet;
27. Planning Director's Decision pertaining to street right-of-way standards, dated November 3, 2004;
28. Review of 1988 Wetlands High School Annex Wetland Assessment Report, prepared by Adolfson Associates, Inc., dated April 29, 2004;
29. Georgian Heights Phase 4 Habitat Conservation Area Report, prepared by Adolfson Associates, Inc., March 2005;
30. Georgian Heights Phase 4 Wetland and Stream Mitigation Plan, prepared by Adolfson Associates Inc., March 2005
31. Georgian Heights Phase 3 and 4 Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report, prepared by Associated Earth Sciences, Inc., April 2004;
32. Addendum to Geotechnical Report (Exhibit 31), prepared by Associated Earth Sciences, June 4, 2004;
33. E-mail from Fire Marshall regarding public roads, dated April 5, 2005
34. City of Woodinville's Approval of Deviations
35. Hydraulic Project Approval, dated February 24, 2005

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearings Examiner enters the following Findings and Conclusions:

### FINDINGS

1. The Applicant has requested approval of a Preliminary Plat to subdivide 19.22 acres of land into 51 single-family residential lots. The Applicant has also requested a Reasonable Use Exception (RUEX) in order to place sanitary sewer and water lines within two areas of wetlands located on the property. The subject property is located in the northwest quadrant of the City of Woodinville, in the "Wedge Neighborhood," south of NE 205<sup>th</sup> Street and north of Woodinville High School. A portion of the proposal is the conclusion of the Georgian Heights Subdivision Phase 3, which the Applicant developed in 2004. *Exhibit 1, Staff report page 2; Testimony of Mr. Fredlund*
2. The King County Tax Assessor's parcel number is 0326059011. *Exhibit 2.* The property is zoned Single Family Residential (R-6). *Exhibit 1, Staff report page 2; Testimony of Mr. Fredlund*
3. The preliminary plat application was submitted on December 29, 2004. *Exhibit 2.* The City issued a notice of completed application on January 4, 2005. *Exhibit 3.* For the purpose of the open record public hearing, the plat application and the RUEX were consolidated. *(RCW Title 36 Chapter 70B)*
4. The City and the Applicant agree that the subject property is a 'very difficult parcel to develop' due to the extensive wetlands on the site. Main sources of wetland hydrology for the site include upslope urban development, groundwater seepage, and the Type 4 streams. Prior development (Lechner Plat and Creekside II) of the surrounding areas to the west have utilized the parcel as part of their stormwater drainage systems and, in part, created both the Type 4 streams that enter the property and resulting in a large wetland. *Exhibit 1, page 4; Exhibit 30, page 4; Testimony of Mr. Cherewick; Testimony of Mr. Fredlund*
5. The Northshore School District originally purchased the subject property in 1986. In 2004, the School District surplused the property and sold it to Shamrock Park Limited Partnership (Shamrock). At the time of sale, the property was zoned Public Institutional (P/I). In 2004, the Shamrock, through Mr. Cherewick, applied for and was granted, a rezone of the project to Single Family Residential (R-6), with a base density of six dwelling units per acre.<sup>2</sup> *Exhibit 1, page 2; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*
6. Surrounding land is zoned similar to the subject property. Property to the east and west is designated as Moderate Density Residential on the City's Comprehensive plan and is zoned Single Family Residential R-6. Single family residences are to the north of the subject project and lie within unincorporated Snohomish County, outside of the City's

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<sup>2</sup> At the same time, the Woodinville City Council also amended the Comprehensive Plan designation to reflect the Single Family Residential zone.

jurisdiction. Located to the south of the subject property is Woodinville High School on land which is designated on the City's Comprehensive Plan and zoned Public Institutional (P/I). *Exhibit 1, page 13-14.*

7. Within the R-6 zone, the minimum permitted lot size is 2,500 square feet with a minimum lot width of 35 feet. Front and interior setbacks are 10 feet and 5 feet, respectfully. *WMC 21.12.030A, WMC 21.12.100.* The Applicant proposes 51 lots ranging from 3,236 square feet (lot number 37) to 17,963 square feet (lot number 61) with the average being 5,611 square feet. All of the proposed lots would conform to R6 standards. The Applicant contracted with the West Group to review the proposal for compliance with the City's code and the Group determined that the proposal was in compliance. *Exhibit 1, page 24; Exhibit 6; Exhibit 11; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*
8. The City of Woodinville's Comprehensive Plan designation for the property is Moderate Density Residential. Some of the Comprehensive Plan goals and policies applicable to the proposal include: Policy LU-1.2. seeking to encourage future developments in areas with the capacity to absorb development; Policy LU-1.2.2 encouraging development in areas where adverse environmental impacts can be minimized; Policy LU-2.2 desiring to connect residential, open space, and recreational areas by an appropriately planned network of streets, walkways, bicycle paths, and utility corridors; Policy LU-3.1 seeking to encourage development that complements the existing residential development patterns in Woodinville's neighborhoods; Policy LU-3.2, desiring to preserve the existing natural environment of Woodinville's neighborhood; Policy LU-3.3, seeking to maintain a safe, pleasant place to live; Policy LU-3.8, permitting a range of densities and variety of housing to meet the needs and income of residents; Policy LU-5.6, enhancing and protecting water quality through control or runoff and best management practices; Policy LU-5.11, controlling clearing and grading; Policy LU-5.14, maintaining natural vegetation coverage at levels sufficient to moderate surface water runoff and to protect the integrity of stream channels; Goal H-1.1, allowing for a variety in lots and housing styles; Goal PRO-2, ensuring adequate enriching recreational activities for the citizens of Woodinville; Policy PRO-2.1, creating a diversity of new facilities and opportunities; Policy CD-2.2, requiring native vegetation; Policy CD-3.1.2, ensuring new development which reflects the characteristics of the site, protect sensitive areas, and reflects natural topography and vegetation; Goal CD-4, creating pedestrian friendly environments throughout Woodinville; Policy CD-4.1, promoting pedestrian amenities; Policy CD-4.5, promoting pedestrian/bicycle connections to and through residential neighborhoods; Policy T-2.1, requiring development to pay its fair share toward transportation improvements to help mitigate impacts; Policy T-2.6, incorporating pedestrian/transit design and access; and Policy U-2.1, to requiring connection to the municipal water system. *Exhibit 1, pages 14-18.*
9. Pursuant to WMC 21.12.080, the number of residential units allowed on the property is based upon the net development area of the site. The net area is calculated by excluding from the total acreage, area used for right-of-ways, stormwater facilities, sensitive areas

and their buffers, and on-site recreation spaces. *WMC 21.12.080(1)*. City Planning Director, Ray Sturtz, reviewed the City's Zoning Code and determined that, pursuant to the Code, any easement for landscape planter strips and sidewalks which abuts a designated right-of-way must be included as part of the right-of-way for the purpose of determining site density. The City determined that 8.53 acres was the net development acreage and therefore 51 residential units were allowed.<sup>3</sup> *Exhibit 1, page 6; Exhibit 27; Exhibit 33; Testimony of Mr. Fredlund*

10. Due to the extensive wetlands running the length of the subject property, the Applicant proposes to locate the residential lots in separate sections of the site. While the location and amount of lots has been revised several times, the Applicant's preferred and adopted plat is depicted in Exhibit 11. In the preferred plat, six (6) lots will be located in the southeast portion of the property<sup>4</sup>; four (4) lots will be located in the northeast portion of the property<sup>5</sup>; and the remaining forty-one (41) lots will be located along the western and southern boundary lines of the property.<sup>6</sup> There will be three (3) points of access to the subdivision. Access to the lots in the northeast corner and lots along the western and southern boundary of the property will be from NE 205<sup>th</sup> Street. Access to the lots in the southeast corner of the property will be from 136<sup>th</sup> Avenue NE via Georgian Heights Phase 3. *Exhibit 11*
11. A Wetlands Report was prepared in 1988 by Raedeke Associates Scientific Consulting. The report denoted that there were three wetlands (Wetland 1, Wetland 2, and Wetland 3) and several well-defined streams on the property. In 2004, Adolfson Associates Inc. reviewed the 1988 Report and performed a site visit. Adolfson determined that the wetlands were a Class II wetland<sup>7</sup> and that Wetland 3 was actually part of Wetland A (formerly Wetland 1). Adolfson determined that the on-site streams were Class III streams.<sup>8</sup> Though Adolfson classified these streams as Class III, pursuant to WMC 21.24.370, streams which are perennial or intermittent and are not used by fish are classified as a Type IV. Based on the Adolfson review and applicable City code, the subject property is now said to contain two (2) Class II Wetlands (Wetland A and Wetland B (formerly Wetland 2)) and three (3) unnamed Type IV intermittent or ephemeral streams. *Exhibit 1, pages 4-5; Exhibit 17, pages 23-28; Exhibit 28.*
12. Class II Wetlands require a 100-foot buffer that may be reduced to 50 feet with enhancements. *WMC 21.24.330(1)(b)*. Class IV Streams require a 50-foot buffer that may be reduced to 35 feet with enhancements. *WMC 21.24.380(1)*. The Applicant sought a buffer reduction to 50 feet for the wetlands. Pursuant to WMC 21.24.340, the Planning

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<sup>3</sup> The Hearing Examiner presumes that the City's determination of net buildable acreage was based on the Planning Director's conclusion as provided in Exhibit 27.

<sup>4</sup> These lots are denoted as Lot Numbers 14-19.

<sup>5</sup> These lots are denoted as Lot Numbers 61-64.

<sup>6</sup> These lots are denoted as Lot Numbers 20-60.

<sup>7</sup> Class II wetlands designation requirements are provided for in WMC 21.24.320(2)(b)

<sup>8</sup> Class III streams are intermittent or ephemeral during years of normal rainfall and are not used by salmonids.

Director has the authority to allow for alterations of a wetland buffer. *Exhibit 1, page 5; Exhibit 30, page 7; Testimony of Mr. Cherewick*

13. The Applicant proposes to mitigate impacts caused by the development and encroachment into the wetlands and their buffers. A Wetland and Stream Mitigation Report was prepared by Adolfson Associates Inc. in March 2005. *Exhibit 30.* The Applicant proposes a 2:1 enhancement of the wetlands. 18,383 square feet in buffer enhancement and 19,861 square feet in wetlands enhancement. The Applicant also proposes to create 7,838 square feet of Class II wetlands. *Exhibit 25.* The wetlands, streams, and their remaining associated buffers shall be designated as a Native Growth Protection Easement and noted on the face of the plat. The proposed buffer reduction, as mitigated, is acceptable to the City. *Exhibit 1, page 5; Exhibit 11; Testimony of Mr. Fredlund; Exhibit 30.*
14. The Washington State Department of Fish and Wildlife has issued a Hydraulic Project Approval for the proposed development. The HPA allows the Applicant to install three (3) culverts to allow for road crossings over the Type 4 streams. *Exhibit 1, page 6; Exhibit 35; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*
15. The Applicant proposes four types of roads. Lot numbers 61-64 will be accessed from NE 205<sup>th</sup> Street via an extended cul-de-sac of approximately 1,000 feet in length. Lot numbers 14-19 will be serviced via a standard cul-de-sac and will conclude the development of Georgian Heights Phase 3. A majority of the lots will be accessed via a road from NE 205<sup>th</sup> street terminating in a cul-de-sac and providing from one hammerhead turnaround at approximated 385+/- feet from NE 205th. An additional 490-foot long private road will extend southward from this cul-de-sac and provide access to lot numbers 40-42 and 57-60. *Exhibit 1, page 6; Exhibit 11.*
16. Woodinville transportation and infrastructure standards require that a right-of-way (ROW) be a width of 60 feet.<sup>9</sup> Transportation standards limit the length of a cul-de-sac to 500 feet (Section 1-4.2.9). The Applicant sought a Deviation for Standards Request (Exhibit 24) for both a reduced ROW width and a cul-de-sac in excess of the maximum length. The City Engineer granted the deviation for the reduced ROW. *Exhibit 1, page 7; Exhibit 24, Exhibit 34.* The approved a deviation results in a ROW of 30 feet with two 11-foot vehicle lanes and one 6-foot parking strip. Two 6-foot landscape strips and two 5-foot sidewalks are shown on either side of the street as easements on private lots. Repair and maintenance of these easements is addressed in the plat's Covenants, Conditions, and Restrictions (CC&Rs) which have been drafted. *Exhibit 1, page 7; Exhibit 11; Exhibit 24; Testimony of Mr. Cherewick.*
17. Transportation Standard 1-4.2.10.9 provides that a private road may serve only 4 residential units. The Applicant seeks to provide access for 7 units - lot numbers 41-42 and 57-60 - via a private road of approximately 490+/- feet in length. *Exhibit 11.* At time

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<sup>9</sup> The 60-foot right-of-way is comprised of two 18-foot travel lanes with gutters, two 6-foot planter strips, and two 6-foot sidewalks.

of purchase, the Applicant projected that the Northshore School District would grant an ingress/egress easement across the northwestern portion of the District's adjoining property. The District has granted this easement. The Applicant asserts that without this private roadway lot numbers 57-60 would be landlocked and non-developable. The City and the Applicant have actively investigated other methods of access but have found no other alternative because neither the Hearing Examiner nor the City Engineer has the authority to permit a deviation from the City's standards Section 1-4.2.10.9. However the City Council has retained the authority to allow a deviation from the City's standards pertaining to the number of residential units served by a private roadway. The Council has not yet made this determination. The Planning Department has recommended approval. *Exhibit 1, page 7; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*

18. The Fire Marshall's comments on the deviations included statements that a cul-de-sac greater than 500 feet in length and private roads over 300 feet in length requires approval by the fire department. The said approval was verbally given at the TRC meeting subject to the developer providing a modified, impervious hammerhead and fire sprinklers to lot numbers 41-42 and 57-63. *Exhibit 33; Exhibit 34; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick*
19. The Woodinville Water District, the purveyor of municipal water and sanitary sewer to this site, has adequate capacity to provide utility services to this site. The Applicant will be required to improve the off-site existing water system by extending the water main and constructing an on-site distribution system. Each lot in the development will be connected to both the district sewer and water systems. *Exhibit 19.*
20. Pursuant to WMC 21.24, in order to protect the valuable function of a wetland, no development is permitted within the wetland area and the placement of utilities is allowed only within a wetland's buffer if certain requirements are met. *WMC 21.24.340(3)-(4).* The Applicant seeks to locate both sanitary sewer and water lines within the two (2) Class II Wetlands themselves, not just within the buffer. WMC 21.24.080(2) allows for development within a wetland if application of the City's code would deny all reasonable use of the property.<sup>10</sup> *Exhibit 1, page 9; Exhibit 12; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*
21. WMC 20.06.080(2) requires that residential units on lots of less than 1 acre in size and within 330 feet of a municipal sewer line be connected to the sewer line. City code and the sensitive nature of the area discourage the use of septic systems. Due to the topography of the property (the property slopes 5-6% from east to west) and existing sewer lines, the City and the Applicant submitted that the only way to connect Georgian Heights 4 to a gravity sewer line is by crossing the wetlands. Currently existing on the subject property are two 25-foot water and sewer easements which cross the wetlands.<sup>11</sup> One easement runs north to south along the eastern side of the property, the other cross

<sup>10</sup> The exact requirements for an exception are provided for under the "Conclusion – Criteria for Review" portion of this decision.

<sup>11</sup> According to the site plan, these easements are recorded as DE0407-1458-01 and DE0407-1468-01. (see Exhibit 12)

the property in the southern portion, running northwest. *Exhibit 12*. The Applicant proposes to utilize a directional boring technique under the wetlands for placement of the sewer and water lines. This method will cause little disturbance within the sensitive area. *Exhibit 1, page 10-11; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick*.

22. A Stormwater and Technical Information report was prepared by G.R. Parrott, P.E. in April 2004 (*Exhibit 18*). The initial report was prepared for both Georgian Heights Phase 3 and Phase 4 and was based on a projected development of 54 lots (19 in Phase 3 and 35 in Phase 4). A supplement was completed in November 2004 for three additional lots (now four lots – numbers 61-64) in the northeast corner of the property. As stated in the report surface water drainage from impervious areas within the plat will be collected in catch basins and conveyed to one of three detention ponds. Grass-swales, infiltration controls, and flow dispersal will assist in water quality. Detention ponds are to be located on: Tract 994 (southern boundary); Tract 996 (northwest corner); and Tract 998 (northeast corner). The drainage system would be designed in accordance with City standards in order to minimize potential surface, ground, and run-off impacts. *Exhibit 6, page 2; Exhibit 11; Exhibit 15, page 7; Exhibit 18*.
23. Impacts to the City park system were identified. Based on local ordinance the current park impact fee established is \$1,796 per dwelling unit. *WMC 3.36.170*. No objection was made by the Applicant.
24. The subject property is located in the Northshore School District, and would be served by Woodin Elementary School, Leota Junior High School and Woodinville High School. Students attending Woodinville High School are within walking distance. Students attending Leota Junior High School and Woodin Elementary School will be bussed. The School District submitted a School Walk Safety Assessment, dated May 19, 2004, that indicated safe walking conditions to and from schools. To date, the School District has not requested impact fees from the proposed development. *Exhibit 7; Testimony of Mr. Fredlund; Testimony of Mr. Cherewick*.
25. The City of Woodinville was designated the lead agency for review of environmental impacts caused by the proposal, pursuant to the State Environmental Policy Act (SEPA). The City issued a Mitigated Determination of Nonsignificance (MDNS) on April 25, 2005, no appeals were received. *Exhibit 16*.
26. The City has reviewed and approved the Puget Sound Energy Intolight Street Lighting Plan. *Exhibit 1, page 7*.
27. The Applicant submitted a Subsurface Exploration, Geological Hazard, and Preliminary Geotechnical Engineering Report. *Exhibit 31*. The report, prepared in April 2004 by Associated Earth Sciences Inc., was prepared for Georgian Heights Phase 3 and 4 and was based on a proposal to construct 42 single-family residences.<sup>12</sup> *Exhibit 31, page 6*.

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<sup>12</sup> This number is in discrepancy from the Site and Exploration Plan (prepared from the Base Map provided by The Applicant) which shows a total of 48 units (13 in Phase 3 and 35 in Phase 4). The number is in further discrepancy



Based on the Applicant's proposal at the time of issuance, the report concluded that the subject property was suitable for development subject to certain recommendations. *Exhibit 31, page 14*. Recommendations made pertained to site preparation, structural fill, foundation construction, lateral walls, floor supports, detention ponds, and drainage. *Exhibit 31, pages 14-21*. An addendum to this report was prepared by Associated Earth Sciences in June 2004. *Exhibit 32*.

28. The site is mostly forested which some areas dominated by shrubs. The area is considered to be an open canopy palustrine forest. Pursuant to WMC 21.16.130(1)(a), a minimum tree preservation of 30 tree credits per net acre is required. The net site area of the subject property is 8.5 acres and requires a tree credit of 255. The Applicant proposed to retain 163.34 tree credits, thereby requiring an additional 97.1 tree credits which may be met by either retaining existing trees or by planting additional trees. *WMC 21.16.130; WMC 21.16.140; Exhibit 1, page 4; Exhibit 14*. No objection was made by the Applicant.
29. Notice of the open record hearing was posted on the property on April 24, 2005. *Exhibits 22 & 23*. Notice of the application was posted on the property on March 25, 2005. *Exhibit 5*.
30. No public comment on the preliminary plat application or the SEPA Application was received in advance of the hearing not was public testimony was presented at the hearing.<sup>13</sup>
31. A Traffic Impact Analysis (TIA) was conducted by Gibson Traffic Consultants in May 2004. It was based on a proposed development size of 45 units that would generate 431 Average Daily Trips (ADT). The proposal has increased to 51 units since the TIA was completed and it is assumed that the ADT would increase proportionately to 489. Pursuant to the WMC 3.39, the City determined that a fee in the amount of \$1,489.25 per building permit, or \$75,951.50 in total, was necessary to mitigate for traffic impacts created by the proposed development. *Exhibit 20; Exhibit 26; Testimony of Mr. Fredlund*. No objection was made by the Applicant.
32. The proposed development must contribute a proportionate share to other City Capital Improvement Projects (CIP) that would be impacted. The proposed development would impact two CIPs<sup>14</sup> and therefore the proportionate share for these impacts is \$30,710.49. *Exhibit 1, page 8; Exhibit 20, page 6*. No objection was made by the Applicant.

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with the current proposal of 51 units presented at the public hearing and, in addition, the previous proposal did not include lots in the northeast portion of the subject property. Therefore, the Report did not adequately address whether this portion of the property was suitable for development. *Exhibit 31, page 45*

<sup>13</sup> A public comment letter from Jeanette van der Heyden, dated May 13, 2005, was received after the record had been closed. It was not part of the official record which was developed at the open public hearing. (see RCW 36.70B)

<sup>14</sup> The CIPs impacted are the intersection of NE 195<sup>th</sup> Street and 136<sup>th</sup> Avenue NE and the intersection of SR-522 and NE 195<sup>th</sup> Street.

33. In addition to impacts on the City's transportation system, the development may impact State Route 522. Any impacts to the State's highway must be addressed by the Washington State Department of Transportation (DOT). A copy of the MDNS was submitted to DOT but no comments were received prior to the hearing. The City stated that any comments that the State submitted would be considered. The Applicant stated that they have had discussions with DOT. *Testimony of Mr. Fredlund; Testimony of Mr. Cherewick.*

## CONCLUSIONS

### Jurisdiction:

The Hearings Examiner is granted jurisdiction to hear and decide applications for Preliminary Plats pursuant to WMC 20.08.030.

### Criteria for Review:

In order to approve a **Preliminary Plat**, the Hearings Examiner must find that the following criteria set forth in WMC 20.06.020 are satisfied:

- A. **Goals and Policies.** The proposal conforms to the goals, policies, criteria and plans set forth in the City of Woodinville comprehensive plan, community urban forestry plan, and parks, recreation, and open space plan;
- B. **Development Standards.** The proposal conforms to the development standards set forth in WMC Title 21, Zoning Code;
- C. **Subdivision Standards.** The proposal conforms to the requirements of WMC 20.06.020 - Review and Approval Criteria for Subdivisions, WMC 20.06 - Subdivisions and WMC 17.09.020 – Project Permit Application;
- D. **Proposed Street System.** The proposed street system conforms to the City of Woodinville public infrastructure standards and specifications and neighborhood street plans, and is laid out in such a manner as to provide for the safe, orderly and efficient circulation of traffic;
- E. **Utilities.** The proposed subdivision or short subdivision will be adequately served with City approved water and sewer, and other utilities appropriate to the nature of the subdivision or short subdivision;
- F. **Layout of Lots.** The proposed layout of lots, and their size and dimensions take into account topography and vegetation on the site in order that buildings may be reasonably sited, and that the least disruption of the site, topography, trees and vegetation will result from development of the lots;

- G. Geologically Stable Soil. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected;
- H. Safe Walking to School Procedures. Safe walking to school procedures, as established by the City, have been met;
- I. Tree Preservation. Tree preservation has been considered in accordance with the community urban forestry plan and tree preservation requirements have been adequately met.

In order to approve a **Reasonable Use Exception**, the Hearings Examiner must find that the following criteria set forth in WMC 21.24.080(2)(b) are satisfied:

- (i) The application of this chapter would deny all reasonable use of the property;
- (ii) There is no other reasonable use with less impact on the sensitive area;
- (iii) The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
- (iv) Any alterations permitted to the sensitive area shall be the minimum necessary to allow for reasonable use of the property

Conclusions Based on Findings:

1. **Background.** The Applicant requested approval of a Preliminary Plat to subdivide 19.22 acres of land into 51 single-family residential lots. The preliminary plat application was determined to be complete on December 29, 2004. The subject property is identified as parcel number 0326059011. The Applicant also sought a reduction in wetland buffers and a reasonable use exception in order to place sanitary water and sewer lines within a critical area. *Findings of Fact No 1, 2, 3, and 12*
2. **Goals and Policies.** With the conditions of approval, the proposal conforms to the goals, policies, criteria, and plans set forth in the City of Woodinville comprehensive plan, community urban forestry plan, and parks, recreation, and open space plan. *Findings of Fact Nos. 4, 7, 8, 9, 13, 20, 21, 23, 28, and 31.*
3. **Development Standards.**
  - a. The plat would be developed according to R-6 standards; consistent with the zoning of surrounding properties. *Findings of Fact Nos. 6 and 7*
  - b. The proposal includes a storm drainage system that would comply with the 1998



## 11. Reasonable Use Exception.

- a. Due to the topography of the subject property and the extensive wetlands, the project is almost impossible to develop. Though the primary purpose of the R-6 zone is to provide for single family neighborhoods that contribute to Woodinville's small town character. Without the exception, only six lots could be served by a gravity sanitary sewer system, well below the 51 units that the zoning code authorizes. Multi-family, quasi-public, and recreational uses that serve the neighborhood area also permitted in the zoning district. Denial of the RUEX would prevent The Applicant from constructing residences on the subject property which conform to the zoning district's density requirements, thereby denying all residential reasonable use but not all reasonable use.<sup>15</sup> Due to the topography and sensitive environment on the subject property, other uses of the property would be severely limited and may create greater impacts. Strict adherence to conditions of approval will provide the Applicant with reasonable use of the property while insuring protection to the critical areas. Placement of the sewer and water lines within the wetland area provides for development of the property in a manner that supports the public health and provides affordable housing for the community. *Findings of Fact Nos. 4, 10, 11, and 27*
- b. Other possible uses of the property allowed within the R-6 zone, with the exception of a walking trail, require the installation of sewer and water lines. Such uses amount to quasi-public use (library, museum, and church) and would require approximately the same sewer and water capacity as the proposed residential homes. Such permitted uses would probably not have less impact on the sensitive area.
- c. The proposal actually seeks to correct improper stormwater discharge that previous development in the surrounding area has created. The Applicant proposes to create and enhance existing wetlands and their buffers. The utility lines will be located below the surface and will pose no threat to public health, safety, or welfare. The creation of affordable housing serves the needs of the community. The proposal is consistent with the City's Critical Areas Standards and the Comprehensive Plan as it seeks to prevent cumulative impacts by enhancing wetland functions, create affordable housing, and protect the public trust through the creation of a NGPE. *Findings of Fact Nos. 4, 7, 8, 9, 13, 14, and 21*
- d. The proposal utilizes directional boring under the wetlands for placement of the utility lines. By utilizing this technology, little impacts will be seen on the surface

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<sup>15</sup> In *Buechel v. State of Washington, Department of Ecology (125 Wn. 2d 196 (1994))*, the Washington State Supreme Court stated that where recreational use is the only use allowed, the land use regulation does not deprive all reasonable use of the property. Rather what must be looked at to determine if all reasonable use has been deprived is size, location, physical attributes, and, to some extent, the property owner's expectations at the time of purchase, including knowledge of existing regulations.

and minimal impacts will occur. A NGPE will be placed on the wetlands and associated buffers preventing any further intrusion. *Findings of Fact Nos. 13, 20, and 21*

### DECISION

Based upon the preceding Findings of Fact and Conclusions, the request for approval of a preliminary plat to subdivide 19.22 acres of land into 51 single-family residential lots and a Reasonable Use Exception to allow for the placement of sanitary sewer and water lines within a critical area is **GRANTED**, subject to the following conditions:

(Whenever the term "Applicant" or "Developer" are used in these conditions they shall include any of their successors in interest in the property)

1. As provided in the City of Woodinville Municipal Code and the Comprehensive Plan, and by analysis from the Northshore School District Number 417, it has been determined that the proposed development, Georgian Heights 4, will not have an adverse impact on the school district. The Applicant is not required to pay mitigation. Approval of this plat provides for vesting from school mitigation fees.
2. The Applicant, prior to issuance of any clearing and grading permits, shall submit a Temporary Erosion and Sedimentation Control (TESC) Plan.
3. Fire hydrants shall be installed in compliance with requirements of the City Engineer and the Fire Marshall.
4. A note shall be placed on the final plat that requires dispersion or tight-lining of roof drains directly into the stormwater collection system.
5. Park mitigation equal to \$1,796.00 per dwelling unit, or the amount currently approved by the City, for park mitigation, shall be paid to the City at the time of issuance of each single family building permit.
6. The Applicant shall pay traffic impact fees of \$1,489.25 per single family building permit to mitigate for traffic impacts created by the proposed development. The traffic impact fees shall be paid at the time of issuance of building permits.
7. The Applicant shall pay \$30,710.49, a prorated share of the City's Capital Improvement Projects (CIP), for impacts located at the intersection of NE 195<sup>th</sup> Street and 136<sup>th</sup> Avenue NE and the intersection of SR-522 and NE 195<sup>th</sup> Street. This share shall be paid at the time of issuance of building permits
8. All conditions of the MDNS issued for the preliminary subdivision plat and corresponding conditions are herein incorporated into this recommendation.
9. Municipal water and sanitary sewer are to be used exclusively on the site. Water and Sewer service shall be provided by the Woodinville Water District. The Applicant shall

provide a performance bond for all work located in existing right-of-ways as shown on the approved plans at the District. All water and sewer infrastructure improvements located on private property shall be completed, inspected, and approved prior to final plat approval. If all improvements are not complete, a performance bond shall be provided for those improvements prior to final plat approval.

10. The Permit Center Director shall have the authority to direct the developer or the developer's on-site representative to immediately cease activities and redirect their resources toward resolving a specific environmental problem created on the construction site, which in the Director's opinion needs immediate resolution in order to prevent further degradation. Failure by the developer or the developer's representative to redirect their labor and/or equipment to resolve the problem shall result in an immediate Stop Work order being placed on the construction site and resolution of the problem by the City or by a City approved contractor. The developer will be billed for City contract costs and/or costs for time and materials involved in resolving the problem. Billable costs shall include a penalty of 10% of the assessed cost. City invoices must be paid prior to removal of the Stop Work order.
11. Street lighting shall be in compliance with city standards as approved by the City Engineer and as recommended by Introlight division of PSE at the time of site development permit application.
12. The City Engineer shall approve all plans for city infrastructure and shall approve such installation prior to acceptance by the City.
13. A final street lift may be subject to installation under assignment of funds as directed by the City Engineer.
14. All utilities shall be underground within the development.
15. A stormwater management plan shall be approved by the City Stormwater Manager prior to any on-site construction.
16. Best management practices shall be implemented in the installation of infrastructure and any site grading approved by the city.
17. Mail routes and mailbox locations shall be approved by the postmaster. Mailbox locations shall also be approved by the City Engineer to insure they do not interfere with traffic sight distances.
18. The face of the plat shall contain the following information: Sidewalks and landscape planter strips, including trees, located in the easements adjacent to NE 205<sup>th</sup> Street and 134<sup>th</sup> Avenue NE, shall be maintained by the homeowners association and/or the adjacent property owner. In such case where maintenance has not been performed to City standards as exemplified by City park maintenance, the City shall have the option to perform the required maintenance or to contract for such maintenance. The City shall

then bill the association and/or the property owner for the accrued cost of maintenance including administration costs. If City invoices are not paid by the property owner within ninety (90) days of the date of billing, the City shall attach a lien against said property.

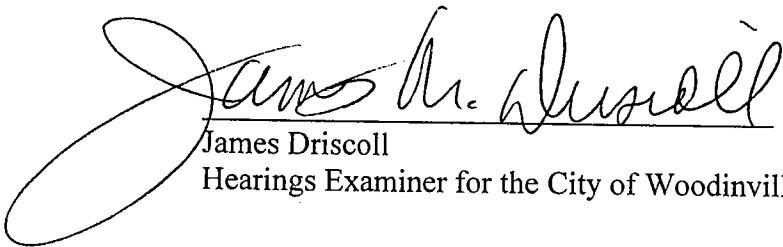
19. An assignment of funds in the amount of twenty (20%) percent of the cost of the city infrastructure shall be submitted to the City prior to final plat approval. The assignment shall be for a period of up to two years as determined by the City Engineer. At the end of the bonding period, the city shall inspect the installed infrastructure. Any infrastructure that appears defective or has deteriorated beyond normal expectation for the bonding period shall, at the City Engineer's direction, be repaired or replaced to the satisfaction of the City.
20. The stormwater system shall be designed to insure that offsite properties are not adversely affected by stormwater from the subject property.
21. NE 205<sup>th</sup> Street improvements shall be made as designated on the preliminary road profile and sections submittal and all stripping and channelization shall be done in accordance with plans to be approved by the City Engineer.
22. Clearing of the site should include sensitivity to existing vegetation of cleared areas to moderate surface water runoff. Appropriate native vegetation shall be used in re-vegetation areas and in street frontage landscape areas.
23. A revised Landscape Plan and Tree Retention Plan shall be submitted showing trees to be retained, method of marking and fencing for protection of such trees (five feet beyond the drip line), proposed boulevard trees, their size and species with planting details and method proposed to irrigate the tree plantings. The information shall be submitted and approved prior to the issuance of a site development permit or construction permit.
24. A letter of credit shall be submitted to the City guaranteeing the installation of street trees at such time as eighty (80%) percent of the properties are occupied so as to insure a better survival rate for the street trees.
25. All cleared and graded areas of the subdivision shall, as soon after grading as possible, be covered with mulch and/or seeded as an erosion control procedure.
26. A Native Growth Protection Easement (NGPE) shall be noted on the fact of the plat conveying to the public a beneficial interest in the land within the easement. This interest includes the preservation of existing vegetation for all purposes that benefit the public health, safety, and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat.
27. A pamphlet stating the obligations of owners and occupiers of private lots within the subdivisions to the NGPE shall be distributed at the time of sale. The pamphlet will state the purpose of the NGPE and provide the conditions of the easement. Such conditions include, but are not limited to, that property owners/occupiers may not disturb trees and



other vegetation within the easement, waste material (yard and/or household) shall not be placed in the NGPE, and that the vegetation on the easement may not be cut, pruned, covered by fill, removed, or damaged without expressed written permission from the City of Woodinville. The pamphlet shall also include information pertaining to landscape methods which limit toxic discharges into the water system.

28. The wetlands and buffer areas as depicted on the revised wetland buffer reduction plan shall be protected from any intrusion by a NGPE. Standard NGPE signs, approved by the Planning Director, and shall be located every 100 feet along the interface between the buffer area and private property. A four foot high black chain link fence shall be placed at the rear property line between private properties and the NGPE to insure that there will be no intrusion into the NGPE by future property owners.
29. An exception to the Critical Area Code (WMC 21.24.080(2)) shall be granted to permit an easement for sanitary sewer and municipal water lines to be located across the wetlands as shown in Exhibit 12. An engineering study and plan showing the location of the directional borings shall be submitted and is subject to approval by the Planning Director prior to the actual utility installation.
30. The Request for Deviation from Standards pertaining to allowing seven (7) lots to be located on the private road extending south and east from the 135<sup>th</sup> Avenue cul-de-sac shall be submitted to the Woodinville City Council with a recommendation for approval. If the City Council decides not to approve the deviation, the Hearing Examiner recommends that the portion of the property which contains lot numbers 57-90, tract 994, and the private road shall be retained as wetlands and included within the Native Growth Protection Easement (NGPE).
31. A copy of this decision shall be included with each property title.

Decided this 3<sup>rd</sup> day of June 2005.

  
James Driscoll  
Hearings Examiner for the City of Woodinville