

HE Notice
5-31-06

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of
**DEWEY MUNRO, on behalf of
GREENWATER CONSTRUCTION**
for approval of a preliminary subdivision

Hearing Examiner File:
MUP-06-014 (SD)
Department Reference:
9603347

Introduction

The Applicant sought approval of a preliminary subdivision of nine parcels into 24 parcels of land. The Director, Department of Planning and Development (Director, DPD or Department) recommended approval of the subdivision subject to conditions.

A public hearing on the subdivision application was held before the Examiner on May 23, 2006. Represented at the hearing were the Applicant, Greenwater Construction, by Debora Goodman, and the Director, by Michael Dorcy, Senior Land Use Planner. The record was held open through May 30, 2006, for the parties to submit a clarification on Seattle Department of Transportation requirements for including a proposed sidewalk on the final plat, and for the Examiner's site visit. The clarification was not submitted.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated.

After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision:

Findings of Fact

Site and Vicinity

1. The proposal site is addressed as 9736 Lindsay Place South, in the Rainier Beach neighborhood. It has an irregular shape and is accessed from Renton Avenue South via a remnant of Lindsay Place South. The site is 2.8 acres in size and is part of a block of parcels bounded by South Pilgrim Street on the north, South Norfolk Street on the south, 57th Avenue South on the east, and 54th Avenue South on the east.
2. The northeast portion of the site, approximately 17,100 square feet, is designated as environmentally critical due to the presence of wetlands. The site slopes down from east to northeast.
3. The site is zoned Single-family 5000 (SF 5000), as are the areas immediately surrounding it. Surrounding properties are developed with single-family residences.

Southwest of the site, across Renton Avenue South, is the Kubota Japanese Garden, a City park. Emerson Elementary School and Saint Paul Catholic School are located nearby.

Proposal

4. On June 27, 2002, the Director issued a decision in MUP 9106680 granting an environmentally critical areas exception to allow a reduction in the size of the wetland and wetland buffer on the site, approving an administrative conditional use to recover development credit and to permit clustered development in a single-family zone, and issuing a Determination of Nonsignificance pursuant to SEPA. The decision was appealed to the Hearing Examiner and upheld in a decision issued on September 3, 2002 (MUP-02-024). The Examiner's decision was appealed to superior court, but the appeal was dismissed on March 17, 2003. The remaining details of the project's history, which dates back to January 2, 1992, is covered in the Director's Analysis and Recommendation, (Exhibit 9), and the Examiner's decision in MUP-02-024.
5. The Applicant now proposes to divide nine parcels of land into 24 parcels ranging in size from 2,567 square feet to 4,174 square feet. Parcel 23 (Tract "A") will be 25,372 square feet in size and established as common open space. Parcel 24 (Tract "B") will be 29,799 square feet in size and designated "Wetland Preserve and Stormwater Detention".
6. The parcels to be developed with single-family residences are generally arranged in a doughnut-shaped pattern, to avoid slopes and wetland areas on the site. The wetland will remain undeveloped and will be enhanced pursuant to conditions imposed in the prior MUP decision.
7. The site will be accessed from Renton Avenue South via a remnant of Lindsay Place South, which will be provided with a turn-around. Part of the turn-around is located on the site, but this will be dedicated to the City. The turn-around has received conceptual approval from the Seattle Department of Transportation (SDOT) and will be designed to accommodate future access, via the unvacated portions of Lindsay Place South to the north, to lots located between Lindsay Place South and 54th Avenue South.
8. On the site, access would be provided through a 20-foot wide, two-way road and a narrower one-way loop road. A concrete walkway would run the length of the roadway, extending from the sidewalk along Lindsay Place South to an elevated walkway along the western margin of the wetland, and providing access to the end of the paved roadway at 56th Avenue South. The walkways would provide a pedestrian link between Renton Avenue South and streets to the north. Easements will provide public access over both the access drive and the walkway.
9. *Parking and traffic impacts for the project were analyzed in the environmental review conducted for MUP 9106680. Parking will be located within the proposed structures and in surface parking spaces. The provided parking would exceed Code requirements even if driveways were excluded.*

10. The Director determined that the proposed project will contribute 17 vehicle trips to the A.M. peak period and 23 to the P.M. peak period, and concluded that this increase will not seriously affect the operation of nearby intersections.

11. The site will be served by private water and sewer systems that will require City approval. It will also include a stormwater system, designed to City standards, that has received conceptual approval. The project proposes to infiltrate stormwater to reduce the impacts of water level fluctuations on the wetlands.

12. The Director imposed conditions on the prior MUP approval to address the impacts of development on the wetland on the site.

Public Comment

13. There were several comment periods for various iterations of this project, including the proposed subdivision and the associated MUP, between 1996 and 2001. At the request of the Rainier Beach Community Club, the Director also met with the community in 2001 to discuss the proposal. Public comments received by the Director did not distinguish between the proposed subdivision and the associated MUP. The comments raised concerns with potential impacts on surrounding properties, including drainage, soil erosion and runoff from clearing; impacts on wetlands and wildlife habitat; noise; increased density; height of proposed structures; development character and impact on property values; and increased traffic and its interface with existing conditions along Renton Avenue South, where traffic is said to travel at excessive speeds.

14. The Hearing Examiner received one comment letter on the day of the hearing, in which the writer asked questions about the Director's Analysis and Recommendation and how certain recommended conditions would be enforced. (Exhibit 10)

15. Two members of the public testified at the hearing. One raised questions about whether certain issues had been considered, such as the potential for mosquitoes to breed in the wetland if it remained wet year-round, and questions about enforcement of conditions imposed on the subdivision. The other person stated that clustered housing, with its smaller lots and reduced street widths, does not provide an environment in which people can live comfortably and safely, and that DPD needed to maintain continuing authority over maintenance of the open spaces within the subdivision to assure that they were maintained.

Director's Review of Subdivision

16. The Director circulated a request for comment on the subdivision to all required agencies and City departments and received the following responses:

a. SDOT recommended the following conditions:

- 1) Street improvements shall be required for the public right-of-way of Lindsay Place South between Renton Avenue South and the private road entering and

exiting Lindsay Court. Lindsay Place South shall be constructed with a curb on both sides of the street, and with a curb-to-curb width of 25 feet;

- 2) A dedication shall be made, as noted on the plat, for a turn-around at the improved end of Lindsay Place South;
- 3) Wheelchair ramps are required at all curb-return landings;
- 4) Street lighting shall be required on Lindsay Place South;
- 5) The plat needs to show the proposed sidewalk on the east side of Lindsay Place South connecting to the existing sidewalk of Renton Avenue South;
- 6) Any proposed grading outside the right-of-way will require approval of the adjacent property owner;
- 7) A retaining wall will need to be designed to City of Seattle specifications, approved and constructed along the west side of Lindsay Place South. A fence and a guard rail shall be required as components of the wall;
- 8) The plat needs to indicate whether the utilities will be public or private;
- 9) All work in the right-of-way is to be constructed per City of Seattle Standard Plans and Specifications.

b. Seattle City Light reviewed the proposed subdivision and supplied the language required for an easement for electrical facilities to provide power to the proposed parcels;

c. Seattle Public Utilities (SPU) noted that the Applicant had signed a contract with SPU to extend the City's distribution system to serve the units in the development and listed the following water service requirements for the proposal:

- 1) Standard driveway approaches will need to be installed at the entry to the private drive serving the subdivision and at the SPU access road entrance. The access road entrance will need to be gated and locked with SPU having control of the lock.
- 2) The project will need to extend the city maintained storm and sanitary sewer mains from 54th Avenue South to Lindsay Place South. The project will need to provide drainage structures in the Lindsay Place South right-of-way and at the terminus of the SPU access road. A paved access road for SPU will need to be constructed from the end of Lindsay Place South street improvements to the maintenance holes at the northwest corner of the site. Public Utility Easements shall be required for the main extensions and for the access road.
- 3) Underground piping through an easement, from the City union to the property line, must be either type K or L copper, or Iplex Kitec (PE-AL-PE) and fittings.
- 4) A PRV (pressure-reducing valve) on private property is required. The Uniform Plumbing Code requires a PRV when water pressure is 80 psi or greater.

d. DPD Drainage Review had no corrections or recommended conditions to the preliminary subdivision;

e. The Fire Department reviewed and approved the preliminary subdivision after the turning radii of the 12-foot-wide portion of the access drive were increased;

f. Seattle Department of Parks and Recreation had no objection to the subdivision;

g. Seattle/King County Public Health reviewed the subdivision and noted that connection to the City's sanitary sewer would be required prior to final plat approval;

- h. The Seattle Office of Housing supported the proposal's intent to increase the number of housing units in the City; and
- i. King County/METRO had no comment on the subdivision;

17. At hearing, a May 19, 2006 email from SPU, with attached easement language, was made a part of the record (Exhibit 11). The email states that recommended condition c(3) from SPU is no longer needed, and that the easement attached to the email should be recorded with the subdivision in place of that recommended condition.

18. The Director conducted zoning and land use reviews for the proposed subdivision and the associated MUP application, and has determined that the subdivision will meet all minimum development standards for the zone or applicable exceptions.

19. The Director analyzed the proposed subdivision pursuant to SEPA and issued a Determination of Nonsignificance, which was not appealed.

20. The Director states that the proposal will provide needed housing opportunities on an urban infill site and recommends approval of the subdivision with conditions.

21. There were no requests for further consideration of the Director's recommendation on the proposed subdivision.

Applicable Code Provisions

22. SMC 23.22.054, entitled "Public use and interest," lists some of the factors the Hearing Examiner must consider in determining whether to approve a subdivision:

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for schools and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and that the public use and interest will be served by the platting of the subdivision, then it shall be approved. If the Hearing Examiner finds that the proposed plat does not provide the appropriate elements or that the public use and interest will not be served, then the Hearing Examiner may disapprove the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The Hearing Examiner shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners.

23. SMC 23.22.052 provides:

A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the City.

C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be provided. Access from a dedicated street shall be required, unless the Director determines that the following conditions exist, and permits access by a permanent private easement:

1. Access by easement would not compromise the goals of the Land Use Code to provide for adequate light, air and usable open space between structures; and

2. The dedication and improvement of a street is not necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is identifiable access for the public and for emergency vehicles; and

6. There is no potential for extending the street system.

D. Roads not dedicated to the public must be clearly marked on the face of the plat. ...

E. If the Hearing Examiner concludes that the public interest will be served, the Hearing Examiner may, in lieu of requiring the dedication to the public of land in the subdivision for protective improvements, drainage ways, streets, alleys, sidewalks, parks and other open space, allow the land to be conveyed to a homeowners' nonprofit maintenance corporation. In that case the subdivider shall, at or prior to the time of filing a final plat for approval, supply the Director with copies of articles of incorporation and bylaws of the grantee organization and with evidence of the conveyance or of a binding commitment to convey. ... The Hearing Examiner may impose other conditions [deemed] appropriate to assure that the property and improvements ... will be adequately constructed and maintained.

....
G. Dedicated streets and alleys shall meet the requirements of Chapter 23.53 and the Street Improvement Manual. Easements shall meet the requirements of Section 23.53.025.

24. Under SMC 23.53.025 D, an access easement serving ten or more residential units must be at least 32 feet wide. However, SMC 23.35.025 H provides that the "Director, in consultation with the Fire Chief, may modify the requirements for easement width and surfacing for properties located in environmentally critical areas" (ECAs) when the modifications would reduce adverse effects to the ECA and adequate access and emergency access can be provided to the structures served by the easement.

25. SMC 23.22.058 provides that the Examiner shall not approve a plat located on land within a wetland or wetland buffer unless it complies with the applicable provisions of SMC 25.09.240 concerning subdivisions in ECAs. That Code section requires that covenants be recorded to restrict development to the area specified in the approved site plan.

26. SMC 23.22.060 requires that proposed subdivisions meet transportation concurrency level of service standards prescribed in Chapter 23.52 SMC.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.76 and 23.22 SMC.
2. The plat will include the appropriate dedications, dedicated streets meet the requirements of Chapter 23.53 and the Street Improvement Manual, and easements meet the requirements of SMC 23.53.025, including the allowance for modifications in critical areas.
3. Access to the subdivision will be provided via an existing platted street right-of-way, which will be improved with a turn-around. All proposed lots will be accessed from a private drive that is subject to a public easement, and a public pedestrian easement connects Lindsay Place to 56th Avenue South. The private access drive will be clearly marked on the fact of the final plat.
4. Light, air and usable open space between structures are not affected by the access by easement. Further, although some neighboring property owners have voiced concerns about emergency access, changes were made that led SDOT, SPU and the Fire Chief to determine that a public street is not necessary or desirable for adequate water supply, fire protection or storm drainage. Further, there will be identifiable access for the public and emergency vehicles, and no potential safety hazards would result from use of the easement. A public street is not necessary or desirable for parking, as more than Code-required parking is being provided on the parcels, with additional parking available in driveways, and if needed, on one side of the one-way loop. SDOT has determined that there is no potential for extending the street system.
5. In summary, the proposed subdivision meets all applicable requirements of SMC 23.22.052.

6. The recovery of development credit and clustered housing were approved through a prior MUP decision and upheld on appeal. The Examiner has no jurisdiction over that decision, or over the question of the advisability of allowing clustered housing as a development option.
7. The property being subdivided is private. The conveyance of common open space within the subdivision to a homeowners' association will provide for its long-term maintenance. Absent a dedication of the open space, and acceptance by the City, there is no legal basis for the City to maintain control over its maintenance.
8. The proposed subdivision would comply with SMC 25.09.240 regarding critical areas. By earlier decision, upheld on appeal, the Director granted an exception to certain wetland and wetland buffer requirements, and covenants will be recorded to restrict development in the wetland and buffer areas. Therefore, the Examiner may approve this subdivision under SMC 23.22.058.
9. The subdivision meets transportation concurrency requirements as required by SMC 23.22.060.
10. As conditioned, the subdivision makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, parks and playgrounds, and sidewalks that assure safe walking conditions for students who walk to and from school.
11. As conditioned, this subdivision will serve the public use and interest.

Decision

The application of Dewey Munro, for Greenwater Construction, for the 24-lot subdivision is **APPROVED**, subject to the following conditions:

The owner(s) and/or responsible party(s) shall:

1. Note on the plat all conditions imposed by this decision.
2. File an ECA covenant prior to issuance of any permit for grading or earth disturbance on site.
3. Incorporate the language of the final ECA Covenant into the final plat.
4. Show the location of the permanent ECA markers and clearly indicate the entire area subject to the covenant on the face of the plat.
5. Note on the face of the plat that *no construction permits for lots 10 through 16 shall be issued, nor shall any development be permitted on lots 10 through 16 until the following conditions of MUP 9106680 have been met:*

- Removal of all human debris and invasive exotic plants from the wetland and wetland buffer areas and verification by DPD;
 - Completion of the re-vegetation program within the wetland and its buffer areas and verification by DPD;
 - To regulate water levels and periodicity, modification or replacement of the existing outlet orifice from the wetland to the City storm-sewer system, and any on-site pre-wetland detention mechanism required by the Revised Wetlands Mitigation Plan, and verification by DPD;
 - Complete construction of an elevated walkway running along the western edge of the wetland, within the wetland buffer, to connect the roadway at 56th Avenue South to the pedestrian path on site, and connecting to the remnant of Lindsay Place South and Renton Avenue South. The siting, design and proposed construction materials of this elevated walkway must have the prior approval of the Land Use Planner at DPD;
6. The final plat shall contain the approved language of an easement for City Light.
 7. *Street improvements are required for the public right-of-way of Lindsay Place South between Renton Avenue South and the private road entering and exiting Lindsay Court. Lindsay Place South shall be constructed with a curb on both sides of the street and a curb-to-curb width of 25 feet.*
 8. A dedication shall be made, as noted on the plat, for a turn-around at the improved end of Lindsay Place South.
 9. Clearly show on the face of the final plat the private access drive and the public easement over it.
 10. Wheelchair ramps are required at all curb-return landings.
 11. Street lighting is required on Lindsay Place South.
 12. The plat must show the proposed sidewalk on the east side of Lindsay Place South, connecting to the existing sidewalk of Renton Avenue South.
 13. Any proposed grading outside the right-of-way requires the approval of the adjacent property owner.
 14. A retaining wall shall be designed, approved and constructed along the west side of Lindsay Place South. The wall shall be designed to City of Seattle specifications. A fence and a guard rail are required as components of the wall.
 15. The plat shall indicate whether the utilities will be public or private.
 16. All work in the right-of-way shall be constructed per City of Seattle Standard Plans and Specifications.

17. A water main is required.
18. Standard driveway approaches must be installed at the entry to the private drive serving the subdivision and at the SPU access road entrance. The access road entrance must be gated and locked with SPU having control of the lock.
19. The project shall extend the city maintained storm and sanitary sewer mains from 54th Avenue South to Lindsay Place South.
20. The project shall provide drainage structures in the Lindsay Place South right-of-way and at the terminus of the SPU access road.
21. The project shall provide a paved access road for SPU, which must be constructed from the end of the Lindsay Place South street improvements to the maintenance holes at the northwest corner of the site.
22. Public utility easements are required for the main extensions and for the access road, and shall be incorporated into the final plat.
23. Include on the face of the final plat the "Easement Provision for Water Facilities" attached to the May 19, 2006 email from Joe Phan of SPU to Debora Goodman. (See Exhibit 11)
24. A PRV (pressure-reducing valve) is required on private property (the Uniform Plumbing Code requires a PRV when water pressure is 80 psi or greater).
25. Prior to final plat approval, provide to the Land Use Planner in DPD copies of the articles of incorporation and bylaws of the homeowners' nonprofit maintenance corporation, and evidence of conveyance of, or a binding commitment to convey, the common open space in the subdivision to the corporation, all as required by SMC 23.22.052 E.

Entered this 31st day of May, 2006.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.