PROCLAMATION

WHEREAS, the Shoreline Council of Neighborhoods has adopted February 12, 2000 as "Neighbor Appreciation Day"; and

WHEREAS, Shoreline is gifted with neighbors who watch out for one another and lend a hand as needed; and

WHEREAS, neighbors beautify our community by caring for community parks, trees, and waterways; and

WHEREAS, neighborhood volunteers make our community safer by serving at storefront police offices and as Block Watch Captains; and

WHEREAS, neighborhood businesses make our lives easier providing valuable services and supporting our community; and

WHEREAS, neighbors guide and advise the City through participation on boards, commissions, advisory committees, neighborhood associations and other aspects of civic life,

NOW, THEREFORE, I, Scott Jepsen, Mayor of the City of Shoreline, do hereby proclaim February 12, 2000

NEIGHBOR APPRECIATION DAY

in Shoreline, a day to "celebrate the goodness in those around us."

Scott Jepsen, Mayor

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF SPECIAL MEETING

Monday, January 3, 2000
6:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Mayor Jepsen, Deputy Mayor Hansen, Councilmembers Grossman, Gustafson, Lee, Montgomery and Ransom

ABSENT: None

1. CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Mayor Jepsen, who presided.

2. FLAG SALUTE/ROLL CALL

Mayor Jepsen led the flag salute. Upon roll by the City Clerk, all Councilmembers were present.

Mayor Jepsen welcomed Kevin Grossman to the Council.

(a) Election of Mayor and Deputy Mayor

Mayor Jepsen turned the gavel over to the City Clerk to conduct the election for Mayor for the term ending December 31, 2001. The City Clerk opened the nominations for Mayor. Councilmember Ransom nominated Ronald Hansen. Deputy Mayor Montgomery nominated Scott Jepsen. Both individuals spoke in support of the candidates they had nominated. The City Clerk called for further nominations, and, seeing none, declared the nominations closed. Both candidates spoke to their nominations. The vote was taken on the nominations in the order they were made. Councilmembers Grossman, Hansen and Ransom cast their votes for Ronald Hansen. Mayor Jepsen, Deputy Mayor Montgomery and Councilmembers Gustafson and Lee cast their votes for Scott Jepsen, who was then declared Mayor for a second term.

The City Clerk turned the gavel over to Mayor Jepsen, who opened the nominations for Deputy Mayor. Councilmember Lee nominated Ronald Hansen. Mayor Jepsen called for further nominations and, seeing none, declared the nominations closed. A unanimous ballot was cast for Ronald Hansen, whom Mayor Jepsen declared elected Deputy Mayor.

Councilmember Lee thanked Councilmember Montgomery for her service as Deputy Mayor for the past two years. Councilmember Montgomery said it was a privilege to serve.

3. CITY MANAGER'S REPORT AND FUTURE AGENDAS

Robert Deis, City Manager, reported that Phase 2 of the Development Code rewrite will be discussed by the Planning Commission this Thursday.

Responding to Mayor Jepsen, Tim Stewart, Director of Planning and Development Services, said if certain items need additional time for discussion, they will be pulled out of Phase 2 so as not to force a premature decision.

Turning to another topic, Mr. Deis gave the background on arson investigations, noting that King County used to provide this service for free but is now charging for it. The proposed charge is $50,000. He said negotiations between the cities that contract for this service and King County are proceeding but are not yet resolved. King County has said it will continue to provide service as long as there is a good faith effort toward finding resolution. The contract cities have offered to pay for one of the two staff for a year and use that time to work out the details of the arrangement. He said the Fire District feels, as do the cities, that the Fire Marshall is called too often. Cutting back the number of calls would cut costs, but agreement must be reached among the cities about service levels. He cautioned the Council that if there is a fire requiring investigation during this period, a quick decision may be required.

Councilmember Ransom asked if the Fire Marshall's Office is a Countywide function. Mr. Deis said the contract cities feel it is, but some cities provide their own fire marshalls. He felt this should be a County service because it is a very specialized area of investigation that takes practice to do well.

On a third topic, Mr. Deis introduced Joyce Nichols, Community and Government Relations Manager, who described the process for nominating individuals to various regional committees. Having members on these committees greatly extends the influence of the City and the interests of the north end of King County. She cautioned that the City will not get all the appointments it submits, particularly if there are other north end representatives. Councilmembers indicated interest in serving on the following committees:

Regional Transit Committee	Councilmember Montgomery
Regional Water Quality Committee	Councilmember Ransom
	Councilmember Lee
Puget Sound Regional Council Executive Board	Deputy Mayor Hansen
Puget Sound Regional Council Trans. Policy Board	Deputy Mayor Hansen
Growth Management Planning Council	Mayor Jepsen
King County Jail Advisory Committee	Councilmember Ransom
King County Economic Development Council	Councilmember Grossman
King County Consortium	Councilmember Gustafson

Seashore Forum	Councilmember Montgomery
King County Disability Board	Councilmember Ransom

Mayor Jepsen noted that Mr. Deis has been appointed to the Puget Sound Regional Council Staff Committee and that Mr. Stewart is staff to the Growth Management Planning Council. J.B. Smith of the Shoreline Fire Department will represent Shoreline on the Emergency Medical Services Funding Task Force.

4. COUNCIL REPORTS

Responding to Councilmember Gustafson, Mr. Deis said there were no Y2K computer glitches. Councilmember Gustafson thanked all the City employees who volunteered their time during this period.

Bill Conner, Public Works Director, added that the emergency exercise was good practice in coordination with all the special districts.

Councilmember Hansen commented on the illegal fireworks in Richmond Beach on New Year's Eve.

Deputy Mayor Montgomery reported that the Sound Transit Board voted to have light rail extend to Northgate. She noted that the Metro transit cuts have been put on hold pending possible legislative funding. She also reported on a meeting with Jean Carpenter from King County Executive Ron Sims' staff to discuss Shoreline's transportation issues. The outcome was: 1) transit service on Route 358 will not be changed; 2) the $500,000 in the County budget for the Aurora project remains; and 3) the County will reestablish the citizen Sounding Boards to discuss the service cuts.

Councilmember Ransom commented that the items before the National League of Cities Legislative Committee were adopted without much discussion. He noted that it appeared that the budget for the King County jail will only be cut by five percent or less.

Mr. Deis noted that the Governor's budget proposes that the State reimburse cities for some of the General Fund revenues lost by Initiative 695. It contains an allocation for Shoreline of $620,000 for 2000 and $1.3 million in 2001. Although there is no guarantee of receiving this funding, it is a starting point for discussions with legislators.

5. PUBLIC COMMENTS: None

6. WORKSHOP ITEMS

(a) Summary of citizen input and update regarding the potential siting of a King County Wastewater Treatment Facility at Point Wells, and possible next steps

Mr. Deis pointed out that the recommendation to oppose the siting of the treatment plant at Point Wells is made absent knowing the specifics addressing all the concerns of the community. He said staff is not recommending "to close the door permanently." However, given what is known at this point, Shoreline should not support a treatment plant at Point Wells.

Kristoff Bauer, Assistant to the City Manager, introduced Reid Shockey, a consultant assisting the City in its analysis of this issue. Mr. Bauer reviewed the public survey taken after the summer forum, noting that it showed that with appropriate mitigation, the construction of an outfall at Point Wells may be acceptable to Shoreline. The survey also showed community support for the annexation of Point Wells.

After noting that the property owner, Chevron, has made it clear that no change to the use at Point Wells is anticipated in the near future, Mr. Bauer reviewed the proposed advocacy objectives that came out of the survey: 1) secure a meaningful role for the City in the King County siting process; 2) take a position of active skepticism based on the community's concerns about the siting of the treatment plant at Point Wells [a rewording from the Council packet]; 3) ensure that the outfall is sited consistent with best environmental practices and consistent with regional wastewater service goals and objectives; and 4) ensure that if Point Wells is selected as the outfall location, any impacts on Shoreline are mitigated consistent with City policy and community sensitivities.

After Mr. Bauer emphasized the importance of building a relationship with Snohomish County, Mr. Shockey listed the goals of the City in working with Snohomish County: 1) securing Shoreline participation in the discussion of establishment of future annexation boundaries; 2) development of an interlocal agreement for cross-county annexations and addressing the reluctance of Snohomish County officials about doing this; and 3) addressing Comprehensive Plan land use issues.

Turning to Shoreline's relationship with Woodway, Mr. Shockey said it has been difficult to develop a relationship regarding Point Wells because Woodway sees it as part of its urban growth area. He mentioned a Woodway Study Committee that staff will attend as observers as part of the effort to maintain a dialogue with Woodway.

Mayor Jepsen called for public comment.

(a) Bill Clements, speaking for the Richmond Beach Community Council (RBCC), said the future of Point Wells is of great interest to the Richmond Beach community, since this neighborhood will feel the greatest impacts from any development there. He described the RBCC's community survey, which showed that 68 percent of those responding opposed a treatment facility at Point Wells and felt no mitigation would make the facility acceptable to the community. He said RBCC representatives will monitor the meetings of the Woodway Study group. He concluded that the RBCC is interested in maintaining good communication with the City as this process evolves.

Responding to Councilmember Ransom's question regarding Snohomish County's resistance to cross-county annexations, Mr. Shockey said it arose from Woodinville's annexation efforts. Staff has been educating those in Snohomish County about the differences between that annexation effort and Shoreline's interest in Point Wells.

After Councilmember Gustafson expressed uncertainty about softening opposition to the treatment plant (as expressed in the revised second advocacy point), he asked about the Siting Committee. Mr. Bauer responded that the County has hired a consultant to start the process, but Shoreline wants to be engaged and help mold the process even before it begins. He said it is unknown whether the committee will be elected officials or staff or a combination. The Regional Water Quality Committee will also have a role in this process. Councilmember Gustafson suggested that former Councilmember King would be a good representative if possible.

Responding again to Councilmember Gustafson, Mr. Bauer said discussions have not begun related to the interlocal agreement with Snohomish County because Shoreline has been asked to address potential political roadblocks first. Deputy Mayor Hansen and staff are meeting with Snohomish County Councilmembers to do some education and remove some of the roadblocks to initiating these discussions.

Councilmember Gustafson suggested asking Chevron for a discount on asphalt since Chevron uses Shoreline roads.

Responding to Councilmember Grossman, Mr. Shockey said Snohomish County is the decision maker about the future of Point Wells, but it realizes that the relationship between Point Wells and the City of Shoreline dictates Shoreline's need to have some authority over how that area is served. He said Snohomish County has a Boundary Review Board (BRB), which would review any annexation request filed with it. However, the interlocal agreement is a prerequisite to accepting an annexation petition.

Councilmember Grossman commented that Shoreline should be educated about Snohomish County's needs, as well as vice versa.

After Deputy Mayor Hansen pointed out that the property owner is the other key player, Councilmember Ransom asked about the rights of the property owner if it wanted to annex to Shoreline but Snohomish County supported annexation to Woodway. Mr. Shockey said this would be a legal question for the BRB acting under the criteria set out in State law. It is unusual to have such a large parcel of land owned by one property owner, but the BRB would not be bound by what that property owner wished. Any dispute after the BRB decision would go to Court.

Mayor Jepsen also questioned changing the wording of the second advocacy objective to "active skepticism." He was willing to move a bit from advocating against the siting, but his view was that the wording should indicate that Shoreline must see proof that a treatment plant at Point Wells is the best thing that can happen for Richmond Beach and the City of Shoreline. He noted that the community does not want a treatment plant even

with appropriate mitigation, and this cannot be ignored. He suggested arranging a site visit for Snohomish County officials, as was done with King County Executive Sims. Seeing the access problems helps make Shoreline's case.

Mr. Deis suggested modifying the wording on the second point by adding the phrase "Absent resolution of the community's concerns, advocate against the siting of a treatment plant at Point Wells." He said Shoreline's concerns are whether all the negative impacts, as perceived by the community, can be addressed and whether there is funding to do so.

Mr. Bauer said staff's concern in suggesting the change was that Shoreline not be perceived as prematurely negative and thereby not willing to actively participate in the process in a constructive way.

Responding to Councilmember Ransom, Mayor Jepsen summarized that staff is being directed to follow the advocacy objectives recommended by staff, with the slight modification to the second point as discussed.

(b) Proposed public participation for the Municipal Services Strategic Plan

Eric Swansen, Senior Management Analyst, provided the staff report, noting that Council directed staff to develop a process for public input regarding municipal services for the City's Municipal Services Strategic Plan. Staff suggests the key informant process, which is used heavily in the health and human services field. He described the interview process, noting the key informant process can reach individuals who have not traditionally been involved in the City. He concluded that after the interviews, the information will be shared with various advisory boards and commissions. All the materials will then be brought to Council and then scheduled for public hearing before adoption.

Mr. Deis said staff is looking for Council direction on selection of the key informants.

Mayor Jepsen called for public comment.

(a) Walt Hagen, 711 193rd Street, mentioned the Planning Academy process, where people felt they had input and made a difference. He did not think the key informant approach would have that result. He felt it will be too subjective to staff interpretation. He supported a broader group process, noting it may cost more but will provide better citizen input.

Mr. Deis reminded Council that the key informant process is the first step with other processes to go through.

Councilmember Lee asked if the Council of Neighborhoods would be given the same questionnaire. Mr. Deis said the intent was to give them the draft plan.

Mayor Jepsen commented that a number of members of the Council of Neighborhoods would potentially be in the key informant pool. Councilmember Lee felt the Council of Neighborhoods should be given the questionnaire to fill out. She said this group is very representative of the whole City.

Mr. Deis commented that Council must balance all the interests, priorities and resources in the City, whereas advisory boards tend to focus on their area of interest.

Responding to Councilmember Montgomery, Mr. Swansen said the goal is to find informed individuals who have specialized knowledge or a broad degree of understanding of the community.

Councilmember Ransom was concerned that interviewees would be responding "off the top of their heads" to many questions. So, in addition to this process, he supported something similar to the Planning Academy. He felt it is important to provide knowledge in a group setting upon which to base responses, even if it is only four hours on one night. He felt it is critical to get informed answers from a broader cross section.

Mr. Swansen commented that the key informants will receive background information to be able to answer the questions and determine whether they are willing to participate in the process.

Councilmember Grossman supported the concept, but he felt that more people should be interviewed and/or focus groups used at the end of the process to test whether the original key informants were truly reflective.

Mr. Swanson commented the plan will go to advisory boards and commissions for their thoughts. This should help with a "reality check." He said staff will identify issues where strong consensus does not exist.

Councilmember Grossman recommended that the development of the pool not be limited to the Mayor and Deputy Mayor. He was comfortable with them making a selection from a broad pool.

Mayor Jepsen commented that the list can be added to if necessary once the process is begun.

Deputy Mayor Hansen agreed with Councilmember Grossman. His concern was the number of key informants. He felt 15 may not give a very broad spectrum. He was also concerned about biasing the result simply by the way the question is asked. He thought perhaps more time should be allocated to the interview process and more people interviewed. He wanted to create an unbiased process.

Councilmember Lee said she could not think of a more representative and knowledgeable group about City services than the Council of Neighborhoods, and it would be worth facilitating a session with them.

Mr. Deis agreed this could be done and there was Council consensus to have 15 - 20 key informants and to have the Council of Neighborhoods do a session.

Turning to the selection process for key informants, Councilmember Gustafson commented there may be citizens no one knows who are interested in being part of the process and who would like to apply. On the other hand, Councilmember Lee felt that an application form will cause people to be reluctant to participate.

Mayor Jepsen said Councilmembers can suggest an unlimited number of people and in two weeks he and Deputy Mayor Hansen will bring back their recommendations.

Responding to Councilmember Gustafson, Mr. Swansen said he will be doing the interviews. The goal is to create a conversational atmosphere in a one-on-one, informal setting. The key informants will receive the questions ahead of time.

At Councilmember Gustafson's suggestion, Mr. Swansen said the key informants can be provided a summary of the interview.

Councilmember Gustafson agreed that the Council of Neighborhoods is an important group to have involved. He said providing the questions in advance and providing a summary after the interview would give some quality control to the process.

Councilmember Lee felt this could be an educational opportunity for citizens to learn more about their local government.

Responding to Councilmember Ransom, Mayor Jepsen said the key informants will not be required to live in Shoreline, but should be effected by Shoreline services in some way.

7. CONTINUED PUBLIC COMMENT: None

8. ADJOURNMENT

At 8:40 p.m., Mayor Jepsen declared the meeting adjourned.

_____

Sharon Mattioli, CMC
City Clerk

DRAFT

CITY OF SHORELINE

SHORELINE CITY COUNCIL
SUMMARY MINUTES OF REGULAR MEETING

Monday, January 10, 2000
7:30 p.m.

Shoreline Conference Center
Mt. Rainier Room

PRESENT: Deputy Mayor Hansen, Councilmembers Grossman, Gustafson Lee, Montgomery and Ransom

ABSENT: Mayor Jepsen

1. CALL TO ORDER

The meeting was called to order at 7:30 p.m. by Deputy Mayor Hansen, who presided.

2. FLAG SALUTE/ROLL CALL

Deputy Mayor Hansen led the flag salute. Upon roll by the City Clerk, all Councilmembers were present with the exception of Mayor Jepsen.

Upon motion by Councilmember Montgomery, seconded by Councilmember Lee and unanimously carried, Mayor Jepsen was excused.

3. REPORT OF CITY MANAGER

City Manager Robert Deis reported on the following: 1) an expected 10,000 to 20,000 visitors on January 23rd at the Carmelite Monastery to view the relics of St. Therese; 2) status of upgrade of Chambers Cable service; 3) resignation of Ted Bradshaw from the Planning Commission as of March 31st and process for filling that and other vacancies; and 4) legal challenge of Initiative 695 by the cities of Lakewood, Bainbridge Island and Bremerton. He said Shoreline was asked if it was willing to participate in the litigation or assist in funding. He reported that Mayor Jepsen had said he was not interested in doing either.

Councilmembers commented as follows: Councilmember Montgomery concurred with Mayor Jepsen; Councilmember Grossman said he was uncomfortable proactively opposing the solid public vote in favor of the initiative; pointing out that the State Attorney General has already ruled on this issue, Councilmember Lee doubted the success of the effort; Councilmember Gustafson said he would like to read the materials before forming an opinion; Councilmember Ransom concurred that he would like to be more informed before expressing an opinion (he noted that although State voters supported I-695 by 60 percent, Shoreline voters only supported it by 40 percent); and

Deputy Mayor Hansen expressed opposition to joining in the suit. He then summarized the majority opinion of the Council against City involvement.

Public Works Director Bill Conner distributed the City's Snow Removal Plan. He pointed out that in addition to King County's three blades for snow removal in Shoreline, the City now has three blades of its own that can be accessed in emergencies.

Moving on, Deputy Mayor Hansen presented Councilmember Montgomery with a plaque acknowledging her service as Deputy Mayor in 1998/1999.

4. REPORTS OF BOARDS AND COMMISSIONS

(a) Report from the Library Board

Susanna Johnson, Chair of the Shoreline Library Board, presented information regarding the King County Library System (KCLS) and activities in the Shoreline and Richmond Beach libraries. She reviewed last year's Library Board goals and thanked the City for its allocation of funds for library programming. Then she outlined this year's goals, one of which is to continue to monitor progress on the new Richmond Beach library. She concluded by thanking Councilmember Ransom for attending Library Board meetings and by introducing Evelyn Phillips, Yoshiko Saheki and Michael Derrick, Library Board members present in the audience.

5. PUBLIC COMMENT

(a) Dennis Lee, 14547 26th Avenue NE, commented that Shoreline citizens did not support the "tax revolt" reflected by I-695. He cautioned against looking for tax dollars from places that could degrade the neighborhoods. Then he distributed a copy of the Briarcrest neighborhood newsletter.

(b) Layne Kleinart, 2135 NW 198th Street, speaking on behalf of the Richmond Beach Underground Wiring Committee, invited Councilmembers to a meeting at City Hall on Friday, January 21, to brainstorm possibilities for partnerships and funding options to achieve underground wiring in Richmond Beach. She asked that this project be added to the 2000 work plan.

(c) George Mauer, 1430 NW 191st Street, objected to the concrete benches that have been installed along the trail in Richmond Beach Saltwater Park and asked that they be changed to be like all of the other benches in the park.

(c) LaNita Wacker, 19839 8th Avenue NW, opposed use of the word "informant" in the key informant process described last week in relation to the Municipal Services Strategic Plan. She supported seeking input from the community but opposed calling individuals "informants" because of other connotations of that word.

Councilmember Gustafson reported that the City received the "Community Partnership Award" for 1999 from the Arts Council.

Mr. Deis explained that the concrete benches in the park were part of the original design approved by Council. The intent was to provide benches that were lower and that would fit into the contour of the land as much as possible. He said this was a very sensitive project, and the design was built around balancing the desires of the neighbors and providing improvements for trail users.

Councilmember Gustafson noted that the Parks, Recreation and Cultural Services Advisory Committee is scheduled to review the master plans for all the parks in order to develop a vision of how they should look. Mr. Deis added that the Parks Director is working on developing standards for the various kinds of parks.

6. APPROVAL OF THE AGENDA

Councilmember Lee moved to approve the agenda. Councilmember Grossman seconded the motion. Councilmember Gustafson moved to place item 9(a) on the consent calendar. Councilmember Ransom seconded the motion, which carried unanimously. A vote was taken on the motion to approve the agenda as amended, which carried 6 - 0.

7. CONSENT CALENDAR

Councilmember Lee moved to approve the consent calendar, as amended. Councilmember Ransom seconded the motion, which carried 6-0, and the following items were approved:

Minutes of Special Meeting of December 6, 1999
Minutes of Dinner Meeting of December 13, 1999
Minutes of Regular Meeting of December 13, 1999

Approval of expenses and payroll as of December 30, 1999 in the amount of $2,524,583.09

Motion to authorize the City Manager to execute a contract with the North Rehabilitation Facility for 2000 landscape maintenance to support the Roads and Surface Water programs in an amount not to exceed $80,000

Motion to authorize the City Manager to execute an agreement for provision of publications writing, editing, design and production services for City publications with Susan Will, d/b/a Will Design and Publications in an amount not to exceed $35,000

Motion to authorize the City Manager to execute an Interlocal Agreement with King County Roads and Transportation Division not to exceed the amount of $550,000 to complete the overlay projects listed in the 2000 Overlay Program; and to authorize the City Manager to execute a contract with a private vendor not to exceed $150,000 for slurry sealing work to complete the alternative methods projects listed in the 2000 Overlay Program

8. ACTION ITEMS: PUBLIC HEARINGS

(a) Public hearing to consider citizens' comments on proposed City regulations governing card rooms in the City of Shoreline

Tim Stewart, Planning and Development Services Director, explained the differences between the staff recommendation (Ordinance No. 223-A), which implements Option 4 as originally directed by the Council, and the Planning Commission recommendation (Ordinance No. 223-B), which implements Option 3. He emphasized that Option 4, which prohibits new gaming establishments, focuses on the number of establishments and not the number of tables within the establishments. He noted that the Planning Commission vote to forward Option 3, which would allow new establishments in Shoreline, was very close—5-4.

Mr. Stewart clarified that Option 4 allows existing card rooms as preexisting non-conforming uses. It allows expansion through the special use permit process. He added that both ordinances add additional parking requirements. Mr. Stewart concluded that Council could amend either ordinance to make it more constrained or more liberal.

Turning to issues raised by Councilmember Ransom, Mr. Stewart explained that under Shoreline's regulations, a non-conforming use may continue. This is a fairly liberal interpretation of non-conformity but means that financing should not be made more difficult. Second, existing applications are regulated by the rules in effect at the time the application was submitted. Finally, he mentioned Councilmember Ransom's clarification of a statement in the staff report that went to the Planning Commission. Councilmember Ransom pointed out there are four social card rooms in Shoreline and three mini-casinos.

Finally, Mr. Stewart noted that Council has information regarding citizen phone calls to the City, most of which supported Option 4.

Deputy Mayor Hansen opened the public hearing.

(a) Ted Bradshaw, 14722 22nd Avenue NE, said gambling comes to the community promising to add tax revenue and jobs, but instead brings community problems, displaced local businesses, and low paying jobs. He referred to the record on the gambling issue, noting many of the articles support the idea that gambling is a

detriment to the community. He concluded that the social costs of gambling offset tax revenues from it.

(b) Larry Bingham, 313 NE 185th Street, emphasized that this is not a tax revenue issue. He said Shoreline is known for its community and family values, which are based on principles of freedom that protect and strengthen the family. He asserted that the activities of vice are based on the principles of slavery and oppose these values. He urged Council to protect families by adopting Option 5.

(c) Dennis Lee, 14547 26th Avenue NE, noted that he personally would support Option 5, but he could understood why Option 4 was proposed. He had a question about whether an existing business could be sold. He cautioned Council that any expansion will have neighborhood impacts.

(d) Jim Mackey, The Highlands, supported Option 4. He said this is an opportunity to move away from what the City has been to a premier city that will attract quality businesses. He urged Council to reaffirm its decision of last summer.

(e) Nat Penrose, The Highlands, said the Highlands chose to join Shoreline as a new community because it was felt that a smaller city could pursue family values. He asserted that the expansion of gambling will not enhance the quality of the neighborhoods. He urged the City to encourage neighborhood residents to improve neighborhoods. He supported Option 4 or Option 5.

(f) Clayton Gillett, 20241 20th Avenue NW, supported Option 5, but he recognized that Council has some responsibility to the owners who have invested in the community. He suggested amending Option 4 to prohibit expansion.

(g) Dan Royal, 19210 Densmore Avenue N, said Shoreline should be a place to raise families and feel safe. He reported that he had been effected by the gambling addiction of a friend. He also supported Option 4 with no expansion.

(h) Clark Elster, 1720 NE. 177th Street, supported Option 5 based on his experience as a police officer. He said gambling can have a pernicious influence on the political process and provide a way to "wash dirty money." He agreed with previous speakers that Option 4 is the only practical option. He favored the addition of a prohibition of expansion.

(i) Bob Tull represented several local licensed card rooms. He urged Council to carefully consider the Planning Commission's recommendation. He asserted that Option 4 will make the expansion of a restaurant, or other types of non-gaming expansion, difficult. He distributed information from the Planning Commission record, and he referred to a November study by the Washington Research Council of the unique card room industry in the state. He said the problems of the "old days" have been remedied. The new card room industry is creating good paying jobs and is not causing

the law enforcement problems of the past. He said many Planning Commissioners stated a preference for Option 4 without onerous restrictions on expansion.

(j) Bob Brennan, President of the Recreational Gaming Association, 17618 SE 102nd Street, Renton, stated that dealers in casinos make much more than the average wage and have full benefits. He referred to surveys which show that card rooms do not negatively impact local law enforcement. He said card rooms have very sophisticated surveillance equipment and do not pose prostitution and drug problems. He noted that employees spend their money in the community, as do the card rooms themselves. He concluded that the demand for mini-casinos has been met. He estimated that only ten more mini-casinos will open. He supported Option 3 or Option 4.

(k) Joe Phillips, 20090 10th Avenue NW, said card rooms create "social slums." He supported Option 5 or, "at worst," Option 4.

(l) Bill Bear, 2541 NE 165th Street, also supported Option 5. He noted that gambling has historically been perceived as negative. He asked Council to consider why. Second, he asked if economic benefits to the City mean economic benefits to the residents. He asserted that gambling has a negative impact.

(m) Sal Leoni, representing the Seattle Cascade Drum and Bugle Corps, said Option 4, as currently written, would mean the end of the Seattle Cascade Drum and Bugle Corps. The 40-year-old organization supports a local flag team and a nationally touring drum and bugle corps each year. He said these activities require approximately $240,000 in annual funding, the majority of which comes from the Cascade Bingo Hall. He reported declining revenues, which resulted last year in a $70,000 deficit compared to expenses. He said the flag program was cancelled this year and, if the trend continues, this will be the last year of the drum and bugle corps.

Mr. Leoni said most people do not wish to control non-profit activities. However, the ordinance affects non-profits because the only commercially feasible way that a non-profit can operate a mini-casino, and thus compete with other mini-casinos, is to share space with a for-profit company. He said the Board of Directors of Cascade Bingo formed a for-profit company, Cascade Food Service. All the profits will go back to the non-profit to support the youth activities. He described the filing of the application and the impact of the moratorium. He asked Council to allow the group to continue this process regardless of the ordinance it passes. He said the bingo hall in Mountlake Terrace recently announced that it will share its location with a for-profit company.

(n) Paul Savage, 19233 Ashworth Avenue N, said he had just attended a board of review for an Eagle Scout, who commented that it is important for citizens to be involved in opposing gambling. He pointed out that business people know the risks of doing business and hire lobbyists to advocate for their interests. He said citizens must rely on staff and the City Council. He urged Council not to look for funding from gambling or to wait for a crisis before determining that "enough is enough."

(o) Richard Johnsen, 16730 Meridian Avenue, opposed City reliance on gambling, but he questioned what businesses could be recruited to replace gaming establishments. He suggested a limit to the amount of money a person could gamble in Shoreline. He said the City should allow new establishments, subject to strict restrictions. He suggested combining Options 3 and 4.

(p) LaNita Wacker, 19839 8th Avenue NW, commented that she was aware of the social affects of gambling from personal experience. However, she noted that the prohibition of new businesses allows a monopoly. She supported Option 1 and allowing the law of supply and demand to work.

(q) Michael Preston, 702 Lakeside Avenue S, representing Goldie's Casino, confirmed that Option 5 would lead to a lawsuit because of vested rights. He supported Option 4, but he was sympathetic to the Drum and Bugle Corps. He said the Council has a responsibility to do what it said it would do: allow gaming in some form. He said people are worried about the expansion of gambling, but the market will only bear so many card rooms or casinos; those that are run efficiently will survive, providing a good tax base and good jobs. He said the industry will self police and try to be a good citizen in the community. He asserted that existing businesses should be allowed to expand.

Upon motion by Councilmember Montgomery, seconded by Councilmember Ransom and unanimously carried, the public hearing was closed.

Ordinance No. 223-A regulating commercial eating and/or drinking establishments with social card rooms and amending Sections 18.06, 18.08, 18.18 and 18.32 of the Shoreline Zoning Code

or

Ordinance No. 223-B regulating commercial eating and/or drinking establishments with social card rooms as a special use permit in the Regional Business, Office, and Industrial Zones with increasing parking requirements, and amending Sections 18.06, 18.08, 18.18 and 18.32 of the Shoreline Zoning Code

Mr. Stewart explained the criteria for special use permits, including neighborhood compatibility and traffic.

Turning to the Cascade Bingo situation, Mr. Stewart clarified that the City accepted the improvements to the facility on the basis that these were for a non-profit booster club. He said neither of the two ordinances tonight would allow a card room at the bingo hall location. He provided wording that would amend Option 3 to permit card rooms in the Neighborhood Business (NB) zone. However, he cautioned that there are other NB zones in the City where card rooms would then be allowed.

Mr. Stewart said Option 4 currently allows the expansion of the number of tables at a facility or the amount of floor space. Such an expansion would require a special use permit. However, Option 4 could be further tightened to prevent such expansions.

Councilmember Grossman commented that an expansion of any building, no matter the use, must go through the building permit process, which sets parameters on the expansion. Mr. Stewart responded that building permits do not receive the degree of scrutiny given to special use permits.

Councilmember Ransom said the requirement for a special use permit severely limits the ability of the business to expand. He pointed out that Commissioners were almost evenly divided during the Planning Commission deliberations on whether the designation of gaming establishments as non-conforming would severely limit their ability to function.

Mr. Stewart said the same special use permit that is required for a new facility under Option 3 is required for expansion of an existing facility under Option 4.

Acknowledging that he is a board member of Cascade Bingo, Councilmember Ransom said he will participate in the discussion. He noted that the State Supreme Court heard a case in which members of the Mountlake Terrace City Council were members of a non-profit board. He said the court ruled there was no conflict of interest in the members acting on a proposal regarding the organization because it was a non-profit.

Continuing, Councilmember Ransom said Cascade Bingo submitted an application. Mr. Stewart clarified that the City has not issued the permit pending a response to 43 conditions identified by staff. Councilmember Ransom said the concept of Cascade Food Services was to run a restaurant and gambling activities other than bingo. He asked if there were grandfathered rights because the application had been filed prior to the March 22nd moratorium. He said that the Gambling Commission and the City of Mountlake Terrace have approved Seattle Junior Hockey to lease space for a mini-casino in their facility. He said Mr. Leoni seeks the right to do the same thing in Shoreline. Council-member Ransom asserted that this is a reasonable request because Cascade Food Services applied for a Level 1 card room before the moratorium.

Mr. Stewart responded that the organization submitted the application after the first moratorium took effect.

Ian Sievers, City Attorney, explained that a moratorium was in place prior to March 22 and that Cascade Food Services is not vested because it did not have for-profit gaming or a vested building permit in place prior to the moratorium.

Mr. Stewart added that staff accepted the permit application based on the express assurance that it concerned the non-profit, not the for-profit.

Councilmember Ransom asked if the area in which Cascade Bingo is located could be upgraded from Neighborhood Business. Mr. Stewart explained that Option 3 does not allow establishments in NB zones because card rooms in neighborhoods would be more intrusive than the current proposal to limit them to Regional Business, Office and Industrial zones.

Councilmember Lee commented that there are many variables to consider in this decision. However, the vision of the citizens for Aurora and the Comprehensive Plan show what people want. She preferred Option 4.

Councilmember Lee moved approval of Ordinance No. 223-A. Councilmember Montgomery seconded the motion.

Councilmember Montgomery moved the following amendment:

> **New language to 18.32.909: Notwithstanding any other provision of this title, the expansion of a nonconforming card room, as that term is defined in SMC 18.06.173, as now in effect or as may be subsequently amended, shall be prohibited ~~subject to the approval and issuance of a Special Use Permit and not a conditional use permit, pursuant to SMC 16.40 and SMC 18.44.050.~~ Expansion of a nonconforming card room means to increase the gross square footage of the structure(s) licensed for gambling activity or to increase the number of gaming tables over the number of tables for which application was pending before the Washington State Gambling Commission as of March 22, 1999.**

Councilmember Lee seconded the motion.

Councilmember Grossman spoke against the amendment, because it prohibits the expansion of parts of gaming establishments to which people have no objections. He said it makes no sense to support Option 4, and to allow some gaming establishments, but then to prohibit expansion of the parts of the businesses that people do not oppose.

MEETING EXTENSION

At 10:00 p.m., Councilmember Montgomery moved to extend the meeting to 10:30 p.m. Councilmember Ransom seconded the motion, which carried 4 - 2, with Councilmembers Lee and Montgomery dissenting.

Mr. Stewart pointed out that the amendment would not prohibit maintenance on the buildings, simply expansion.

Councilmember Lee commented that these establishments do not make any money from their restaurants, so there would be no incentive to expand.

Noting that the majority of citizens prefer Option 5, Councilmember Montgomery supported the amendment as a compromise. She emphasized that she supported the option, as amended, to respond to the fairness issue of businesses already invested in the City, not out of a desire for tax revenues.

Councilmember Ransom disagreed that a majority of citizens would like to see no gambling. He pointed out that the Planning Commission supported Option 3. The Elway survey, in which those for and against gambling were evenly split, showed that 80 percent of the respondents felt gambling was an individual choice and should not be proscribed. In the Eastside Neighborhood Forum, 52 percent supported Option 3. He estimated that only 25 percent of the public supports Option 5.

Councilmember Ransom concurred with Councilmember Grossman's comments. He reminded Council that the Gambling Commission has jurisdiction over the number of card tables. He asserted that the City could be putting itself at risk because it does not have the authority to regulate the number of tables, as proposed in the amendment.

Councilmember Lee commented that some businesses have indicated a reluctance to locate next to a casino. She said this decision should be viewed from an economic development perspective and in terms of what the citizens support. She supported Option 4, with the amendment, as a good compromise.

A vote was taken on the amendment, which failed 2 - 4, with Councilmembers Lee and Montgomery voting in the affirmative.

Councilmember Gustafson noted the absence of the Mayor. He supported Option 4, but he said he needed time to understand the two variations. He asserted that another week would not make much difference and that the Mayor should receive newly presented information.

Councilmember Gustafson moved to postpone action on Ordinance No. 223-A until the next regular meeting when all members are present. Councilmember Ransom seconded the motion.

Mr. Sievers noted that the moratorium expires on January 26 and that an ordinance passed on January 24th would not be effective at that time. He said Council could act at a special meeting next week if it wished. Councilmember Gustafson amended his motion to that affect.

Deputy Mayor Hansen commented that Mayor Jepsen expressed in a voice mail that he supported Ordinance No. 223-A as it stands.

Councilmember Grossman noted that he had come to a decision and that Mayor Jepsen had indicated a level of comfort with the decision being made in his absence.

Councilmember Ransom stated that he had anticipated the presentation of more reading material. He did not think the presence of the Mayor would change the outcome of the vote. He said he had read the 28 studies. He commented that most of them resembled journal articles, not professional studies.

Deputy Mayor Hansen commented that this is a Council decision that does not depend on any one person. He felt Mayor Jepsen's position is clear.

A vote was taken on the motion to postpone until next week, which failed 1 - 5, with Councilmember Gustafson voting in the affirmative.

Councilmember Gustafson said he was sympathetic to Cascade Bingo and asked if that issue could be explored further. Mr. Sievers responded that this is a very complex issue both locally and for the Gambling Commission. However, Council could always ask staff to develop an amendment. Mr. Deis noted the domino effects on other NB zones.

Councilmember Ransom wished to determine whether there was support on the Council to pursue some option for Cascade Bingo to have the Level 1 card room.

Councilmember Grossman felt it would be inappropriate to set policy on a case-by-case basis. He said it would be different to look at the issue of card rooms in NB zones, but he did not think Council should make a decision on a specific application. Councilmember Lee concurred.

Deputy Mayor Hansen commented that there are variance procedures in Shoreline and that Council could give staff direction. However, he did not wish to do this in connection with the vote on this ordinance.

A vote was taken on motion, which carried 5 - 1,with Councilmember Ransom dissenting, and Ordinance No. 223-A (now denoted Ordinance No. 223 for the record) was passed.

10. CONTINUED PUBLIC COMMENT

(a) Sal Leoni, Cascade Drum and Bugle Corps, suggested amending Option 4 so that anyone filling an application by the March 22nd date would be grandfathered, which would apply only to Cascade Food Service. He noted Cascade Bingo is an existing business, which Option 4 was designed to protect. He suggested allowing Level 1 card rooms to expand from Level 1 to Level 2. He asked the Council to direct staff to work with Cascade Bingo to craft such legislation.

(a) Bob Tull, asked about amending the ordinance to allow for expansion of the non-gambling aspects of the business without going through the SUP process.

(b) Larry Bingham, 313 NE 185th, commented that Council's action tonight infers that legitimate businesses and the vice industry are on equal footing. He warned that tonight's action will have consequences down the road.

(c) Richard Johnsen, 16730 Meridian Ave. N., reiterated his advice that Council should have merged both options in order to "have the best of everything." He hoped that tonight's action would not close the door completely on gambling.

11. ADJOURNMENT

At 10:28 p.m., Deputy Mayor Hansen adjourned the meeting.

_____

Sharon Mattioli
City Clerk

Council Meeting Date: January 24, 2000 **Agenda Item: 7(b)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Approval of Expenses and Payroll as of January 18, 2000
DEPARTMENT:	Finance
PRESENTED BY:	Al Juarez, Interim Finance Director

EXECUTIVE / COUNCIL SUMMARY

It is necessary for the Council to approve expenses formally at the meeting. The following claims expenses have been reviewed by C. Robert Morseburg, Auditor on contract to review all payment vouchers.

RECOMMENDATION

Motion: I move to approve Payroll and Claims in the amount of $928,205.30 specified in the following detail:

Payroll and benefits for December 12 through 25, 1999 in the amount of $212,914.86 paid with ADP checks 3675 through 3713, vouchers 520001 through 520090, benefit checks 3039 through 3046.

the following claims examined by C. Robert Morseburg paid on January 7, 2000:

Expenses in the amount of $326.20 paid on Expense Register dated 12/30/99 with the following claims check: 3037 and

Expenses in the amount of $1,250.00 paid on Expense Register dated 12/30/99 with the following claims check: 3038 and

Expenses in the amount of $882.00 paid on Expense Register dated 1/4/2000 with the following claim check: 3047 and

Expenses in the amount of $177,077.10 paid on Expense Register dated 1/5/2000 with the following claim checks: 3048-3068 and

Expenses in the amount of $21,839.06 paid on Expense Register dated 1/5/2000 with the following claim checks: 3069-3084 and

Expenses in the amount of $184,157.07 paid on Expense Register dated 1/6/2000 with the following claim checks: 3085-3096 and

the following claims examined by C. Robert Morseburg paid on January 14, 2000:

Expenses in the amount of $3,997.49 paid on Expense Register dated 1/10/2000 with the following claim check: 3107 and

Expenses in the amount of $2,751.85 paid on Expense Register dated 1/10/2000 with the following claim check: 3108 and

Expenses in the amount of $174,272.96 paid on Expense Register dated 1/12/2000 with the following claim checks: 3109-3126 and

Expenses in the amount of $11,301.69 paid on Expense Register dated 1/12/2000 with the following claim checks: 3127-3137 and

Expenses in the amount of $26,746.09 paid on Expense Register dated 1/12/2000 with the following claim checks: 3138-3152 and

Expenses in the amount of $13,794.57 paid on Expense Register dated 1/13/2000 with the following claim checks: 3154-3155 and

Expenses in the amount of $96,271.36 paid on Expense Register dated 1/13/2000 with the following claim checks: 3156-3177 and

Expenses in the amount of $45.50 paid on Expense Register dated 1/14/2000 with the following claim checks: 3178-3180 and

Expenses in the amount of $577.50 paid on Expense Register dated 1/14/2000 with the following claim checks: 3181-3190.

Approved By: City Manager ____ City Attorney ___

Council Meeting Date: January 24, 2000 **Agenda Item: 7(c)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 226, Reducing the Tax Rate for Bingo and Raffles Due to Change in State Law
DEPARTMENT:	Finance
PRESENTED BY:	Al Juarez, Interim Finance Director

EXECUTIVE / COUNCIL SUMMARY

In 1999, the State Legislature passed and the Governor signed legislation reducing the maximum tax rate for bingo and raffles from ten percent to five percent. Due to this change, the City of Shoreline is required to lower the City's bingo and raffle tax rate accordingly. While the new law was technically effective on January 1, 2000, these revenues will not be collected under the new tax rate until April 7, 2000, because they are collected quarterly as provided under state law.

Based on 1999 gambling revenues, this change will reduce the annual gambling revenue by approximately $40,000. However, this will not affect the 2000 Budget. Staff currently projects that total gambling revenue will arrive at or a little over the $2.3 million that has been budgeted for 2000.

The attached ordinance amends the City of Shoreline Municipal Code to implement this change.

RECOMMENDATION

Move to adopt Ordinance 226, reducing the tax rate for bingo and raffles due to a change in State law.

Approved By: City Manager JB City Attorney

ORDINANCE NO. 226

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, REDUCING THE TAX RATE ON BINGO AND RAFFLES

WHEREAS, Chapter 221, State Laws of 1999, reduces the maximum tax rate for bingo and raffles from ten percent to five percent, effective January 1, 2000; and

WHEREAS, the City of Shoreline is required to implement this change in State law prior to the collection of first quarter 2000 gambling taxes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment. SMC 3.30.020 is hereby amended to read as follows:

3.30.20 Imposed.

Pursuant to RCW 9.46.110, as the same now exists or may hereafter be amended, there is levied upon all persons, associations or organizations a tax on all gambling activities occurring within the city as permitted by state law at the following rates:

A. **Bingo or raffles at a rate of ~~10~~ five percent of the gross revenues received therefrom, less the amount paid for as prizes.**

B. Amusement games at a rate of two percent of the sum of the gross revenues received therefrom, less the amount paid for as prizes, and which rate will generate an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter and Chapter 9.46 RCW.

C. Punchboards or pull-tabs at a rate of five percent of gross receipts; provided, however, that taxation of punchboards or pull-tabs for bona fide charitable or nonprofit organizations shall be at a rate of 10 percent of gross receipts from operation of the games less the amount awarded as cash or merchandise prizes.

D. All social card game rooms licensed under the provisions of RCW 9.46.030(1) and (4) at a rate equal to 11 percent of the annual gross receipts exceeding $10,000. [Ord. 133 § 1, 1997; Ord. 58 § 1, 1995; Ord. 41 § 1, 1995]

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force 5 days from passage and publication.

PASSED BY THE CITY COUNCIL ON JANUARY 24, 2000.

Mayor Scott Jepsen

ATTEST:

Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

Ian Sievers
City Attorney

Date of Publication:
Effective Date:

Council Meeting Date: January 24, 2000 **Agenda Item: 7(d)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorize the City Manager to Execute a Commute Trip Reduction (CTR) Implementation Agreement with King County to Provide CTR Services
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Planning and Development Services Director Kirk McKinley, Planning Manager

EXECUTIVE / COUNCIL SUMMARY

Staff recommends that your Council authorize the City Manager to execute a proposed agreement with King County to provide Commute Trip Reduction (CTR) assistance, program development and review services for the six CTR sites in Shoreline (a CTR site is a company which has 100 or more regular full time employees arriving at work between the hours of 6 and 9 AM). This is the fifth year that we have contracted with King County for this work. The proposed contract amount is for $11,664 a $977 increase over the $10,687 contract amount last year. On December 13, 1999 your Council approved the Interlocal Agreement with King County by which we are eligible to receive state grant funding to administer the Commute Trip Reduction law in Shoreline.

The level of funding for CTR programs from the state is less certain than in past years due to a reduction in 1999 funding levels, and because of the passage of I-695. However, Shoreline partnered with King County and most of the other CTR jurisdictions in King County in submitting a federal Congestion Mitigation Air Quality (CMAQ) grant. This grant was approved and will supplement the funding for our CTR program. There are efforts at the King County and State level to provide more stability to the funding allocations especially in light of the I-695 reduction of funding; staff will continue to track and participate in this discussion.

King County CTR Services provides similar services to most cities in King County. They will provide technical assistance to the six CTR sites in Shoreline, as well as promotional materials, and will ensure that all sites meet all requirements of the state CTR law. The CTR law requires employment sites of over 100 regular full time employees to reduce single occupant vehicle trips and sets out specific goals and requirements to that end.

RECOMMENDATION

Staff recommends that Council authorize the City Manager to sign the CTR Implementation Act Agreement with King County for Commute Trip Reduction services in the amount of $11,664.

Approved By: City Manager LB City Attorney

BACKGROUND / ANALYSIS

The proposed Commute Trip Reduction Act Implementation Agreement with King County is intended to continue an existing program whereby King County Commute Trip Reduction Services provides Shoreline with assistance in ensuring that Shoreline and Shoreline sites are in compliance with the State CTR law. The sequence of funding to support CTR in Shoreline is outlined as follows:

- Shoreline receives funding from the State, via King County to implement the CTR law. Most recently, on December 13, 1999 the Council approved the Interlocal Agreement with King County by which we are eligible to receive state grant funding to administer the Commute Trip Reduction law in Shoreline.

- Shoreline contracts with King County to provide CTR Act Implementation Services (the current agenda item). The Council has approved similar contracted services with King County CTR Services the past four years. This year the contract amount is $11,664, a $977 increase over the contract in 1999.

The entire amount of State grant funding will be spent on this contract with King County.

King County Commute Trip Reduction Services provides services to most cities in King County. They will provide technical assistance to the six CTR sites in Shoreline, as well as promotional materials, and will ensure that all sites meet all requirements of the state CTR law. This includes ensuring that annual reports are submitted on time and accurate, conducting site surveys, and holding quarterly meetings with all six Employee Transportation Coordinators. Metro also attends, monitors and shares information and issues with staff from all regional and state CTR forums, including the Governors CTR Task Force, and King County Coordinating Committee meetings. They also track CTR related legislative issues for us. The six CTR sites in Shoreline include: Shoreline Community College, Washington State Department of Transportation (WSDOT)– Northwest Region, Crista Ministries Campus, State of Washington Public Health Lab (Fircrest), Fircrest School, and City of Shoreline City Hall campus.

The City is required by State law to ensure that CTR programs are maintained year round. The proposed contract covers the entire calendar year for 1999 as described above.

RECOMMENDATION

Staff recommends that Council authorize the City Manager to sign the CTR Implementation Act Agreement with King County for Commute Trip Reduction services in the amount of $11,664.

Council Meeting Date: January 24, 2000 **Agenda Item: 8(a)**

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Closed Record Appeal Hearing of Planning Commission Recommendations on the Zevenbergen Subdivision
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Ian Sievers; City Attorney; Tim Stewart, Director, Planning and Development Services

EXECUTIVE / COUNCIL SUMMARY

The City Council is asked to conduct a closed record appeal of the Planning Commission's recommendations (Attachment A) on the Zevenbergen long subdivision. The Planning Commission Report is formatted to show changes requested by the Commission to the original staff report prepared on May 25, 1999 (additions are underlined, deletions are strikethroughs). The appeal (see Appeal Statement, Attachment B) was filed by several citizens who have selected Michael O'Connel as their representative under procedural rules adopted by the City under Resolution 130. The developer of the plat is represented in the appeal by their attorney, Courtney Kaylor. The appellant and developer have filed written argument (Attachments B and C)

The Planning Commission held open record hearings on the preliminary plat application in September and November of 1998, and following remand from the Hearing Examiner on February 24, 1998, held a new hearing on June 3, 1999. Under SMC 16.35.120 the City Council is the appeal body for plat recommendations and may grant or deny the appeal.

The issue in this appeal is narrow. Plat applications must be approved under zoning and other development regulations in effect on the date of filing a complete application. It is not disputed that the minimum lot size when the plat was filed was 5,000 sq. feet and that the lots of the proposed subdivision met this standard. The City amended its minimum lot requirement to 7,200 sq. feet effective September 28, 1998, and the lots in this subdivision are too small to meet this standard. Appellants claim that the plat application may not be considered under the former standard because the application did not satisfy a code requirement for recreational area dedication. Developer agreed to dedicate one of the new lots as a park during the review process as a condition of plat approval on June 3, 1999, reducing the number of lots available for residential use from 14 to 13 (former lot 7 shown as "Park" on Commission Ex. 3C, Attachment D). Appellants argue this created a new or revised application subject to the larger minimum lot standard adopted in September 1998. The issue here is whether a condition on the original plat during the approval process subjects the application to review under the laws in effect at the time the change is accepted as part of the proposal.

In a closed record appeal no additional testimony or evidence is presented. The appellant has filed a transcript of testimony presented at the open record hearing before the Planning Commission. The balance of the record consists of documents submitted as part of the

application file or admitted during the Planning Commission hearings. The transcript and hearing record are on file at the Planning and Development Services Department

The Council should consider this record and the Planning Commission Report and Recommendation to Council, in light of written argument of the parties (Attachments B and C) and oral argument presented at the council hearing. After introduction by the Mayor and background presentation by the Department of Planning and Development Services, the appellant's representative may present argument followed by the respondent's representative and finally appellant's rebuttal argument, if any. The appellant has the burden of establishing that the Planning Commission recommendation is not supported by the preponderance of evidence.

If the appeal is denied the Council should consider the preliminary plat application scheduled for later on tonight's agenda. If the appeal is upheld, the application should be denied because lots do not meet the 7200 sq. ft. standard.

RECOMMENDATION

It is recommended that Council hold a closed record hearing, hear arguments by both the appellant and respondent and then decide whether to uphold or deny the appeal.

Approved By: City Manager LB City Attorney

ATTACHMENTS

Attachment A	Planning Commission Report and Recommendation to City Council
Attachment B	Appeal Statement
Attachment C	Argument of Respondents (transcript pages attached are corrected)
Attachment D	Planning Commission Ex 3C

Transcript and Record of open record hearing are on file with the City Clerk

Planning Commission Meeting Date: ~~June 3~~July 29, 1999 **Agenda Item:** ~~8~~5A

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Report to the City Council ~~Combined Public Hearing~~ ~~O~~on An Application by John and Nancy Zevenbergen for a 1~~4~~3 Lot Preliminary Long Subdivision at 640 NW 180th Street ~~and on the July 13, 1998, SEPA Threshold Determination Issued for the Same Proposal~~
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	James Holland, Senior Planner Tim Stewart, Director, Planning and Development Services

INTRODUCTION

The purpose of this report is to provide the City Council ~~Planning Commission and Hearing Examiner~~ with the findings of fact and analysis necessary to allow effective review and evaluation of the proposed Zevenbergen preliminary subdivision. The report follows the format identified in Section 9.6 of the Rules of Procedure for Proceedings Before the Hearing Examiner and Planning Commission (Exhibit A, City Resolution No. 130).

I. FINDINGS

SUMMARY INFORMATION

Project Address:	640 NW 180th Street, Shoreline, WA 98177
Zoning:	R-6 Residential (Six (6) dwelling units per acre)
Property Size:	105,099 Square Feet (2.41 Acres)
Proposed Action:	Preliminary Formal (Long) Subdivision
Number of Proposed Lots:	~~14~~ 13
Proposed Lot Size:	**Lot 1:** 5,642 Sq. Ft., **Lot 2:** 5,134 Sq. Ft., **Lot 3:** 5,132 Sq. Ft., **Lot 4:** 6,155 Sq. Ft., **Lot 5:** 6,025 Sq. Ft., **Lot 6:** 6,024 Sq. Ft., ~~**Lot 7: 6,022 Sq. Ft.**~~, **Lot ~~8~~7:** 5,391 Sq. Ft., **Lot ~~9~~8:** 5,391 Sq. Ft., **Lot ~~10~~9:** 5,391 Sq. Ft., **Lot 1~~1~~0:** 18,766 Sq. Ft., **Lot 1~~2~~1:** 5,720 Sq. Ft., **Lot 1~~3~~2:** 5,720 Sq. Ft. **Lot 1~~4~~3:** 5,924 Sq. Ft.
Comprehensive Plan Designation:	UM (Urban Medium, 4 - 12 Units Per Acre)
Subdivision Name:	Zevenbergen Subdivision
Application No:	1998-00380
Applicant:	John and Nancy Zevenbergen
Property Owner:	John and Nancy Zevenbergen

1. The Proposal

The proposal is to formally subdivide (Long Plat) the property known as 640 NW 180th Street into a total of ~~fourteen (14)~~ thirteen (13) residential building lots (Attachment A, Site Plan).[1] The property is 2.41 acres in size and entirely zoned R-6 residential. The average size of all the proposed lots (excluding the proposed access tracts) would be 6,603 square feet. Lots ~~5, 6 and 7~~ 5 and 6 of the proposed long plat would have direct access onto 6th Avenue Northwest, while lots ~~8, 9 and 10~~ 7, 8 and 9 would have direct access onto NW 180th Street. Lots 1 through 4 and ~~12, 13 and 14~~ 11, 12 and 13 would be served by a private road identified as Access Tract A, and Lot 1~~4~~0 (containing the existing house and garage) would be served by a private driveway leading directly to NW 180th Street.

2. Legal Description of the Subject Property

The South Half of Tract 7, Richmond Beach Five Acre Tracts, According to the Plat Thereof, Recorded in Volume 12 of Plats, Page 1, Records of King County, Washington;

Except the West 20 feet of the South 165 feet Thereof; and Except the South 10 Feet Thereof as Conveyed to King County for Northwest 180th Street By Deed Recorded Under Recording No. 4981199; and

Except the East 10 feet Thereof as Conveyed to King County for 6th Avenue Northwest By Deed Recorded Under Recording No. 523912.

Together with the East 90 Feet of the South half of Tract B, Richmond Beach Five Acre Tracts, As recorded in Volume 12 of Plats, page 1, Records of King County, Washington; Except the South 165 feet Thereof.

3. The Project Site

A single family residence and a detached garage (both located on proposed lot 1~~4~~0) currently occupy the subject property. The existing house is set back approximately 160 feet from the NW 180th Street right of way and is substantially screened from the public roads and adjacent development by a mix of mature vegetation and wooden fencing. The garage is located immediately to the southwest of the existing house. Both structures are in good condition and would be retained in the event of plat approval. A large playing field area occupies most of the eastern portion of the property and smaller lawn areas lie to the north and west of the existing house. While a number of significant trees are scattered across the property, they are mainly concentrated in the west and southwestern areas. The property is substantially flat with an average slope of approximately 2%. None of the property has been designated as environmentally sensitive under the Environmentally Sensitive Areas standards of the Shoreline Zoning Code (SMC 18.24).

Some of the above described characteristics of the site can be attributed to the fact that its eastern portion was filled under the authority of a grading permit issued by King

[1] **See also Attachment H to the September 27, 1999 Staff Report to Council, which is a conceptual revision of the preliminary plat to 13 lots with a park.**

County on October 23, 1990. The Mitigated Determination of Non-Significance (MDNS) issued for the October 1990 grading permit by King County required the applicant to produce a geotechnical analysis evaluating project site settlement, seismic stability and foundation support, prior to it being developed for any new homes. A similar report was required by the City of Shoreline in the MDNS issued for this proposal on July 13, 1998. ~~As of the date of submittal of this report to the Planning Commission, the applicant has not provided any specific information on the type and characteristics of soils found on the project site.~~

Two public roads serve the property. 6th Avenue NW runs immediately adjacent to the eastern property boundary, while NW 180th Street lies against the southern property boundary. The Public Works Department has designated this portion of NW 180th Street, linking 6th Avenue NW and 8th Avenue NW, as a Collector Arterial.

4. The Neighborhood

The project site is located in the Richmond Highlands Neighborhood of Shoreline (Vicinity Map, Attachment C). The dominant land use in the surrounding area is single family residential. Sunset Elementary School is located approximately 3 blocks southwest of the project site and both the Boeing Creek Open Space and Shoreview Park are situated approximately five blocks to the south at the intersection of NW 175th Street and 6th Avenue NW. The nearest multi-family residential development and commercial development is located some six blocks to the north along Richmond Beach Road.

Not all urban facilities are available in the immediate area of the proposal. No sidewalks are currently provided along either 6th Avenue NW or NW 180th Street. The certificate of water availability issued for the proposal (Attachment D) indicates that water service for the ~~14~~ 13 lots is available from a 6" diameter main located in 6th Avenue NW. This main is described as 'substandard' on the Certificate of Water Availability issued by Seattle Public Utilities. This certificate requires, as a condition of service, that prior to any building permits being issued, the applicant must design and install approximately 385 feet of 4" diameter water main in an easement running from 6th Avenue NW to Lot 11 of the proposed subdivision.

The King County stormwater detention facility located in Shoreview Park (immediately adjacent to the intersection of NW 175th Street and 6th Avenue NW) was the site of the 'Sinkhole' emergency that occurred during the New Year storms of late 1996 and early 1997. The stormwater detention facility was subsequently re-engineered and rebuilt by the City of Shoreline and the most recent improvements (construction of an emergency spillway in 1998) have resulted in this facility receiving its required dam certification from the State of Washington Department of Ecology.

Review of the Planning and Development Services Department permit records found that only three (3) building permits have been issued in the immediate neighborhood of this proposal in the last year. All three permits were for additions to existing residences, with the most significant being the addition of a front porch and two bedrooms.

5. Summary of Regulations Controlling Review of the Proposal

The review standards and process to be followed for applications for preliminary formal subdivision are provided by the following City regulations;

The submission, review and approval of preliminary subdivisions is governed, in part, by the **King County Subdivision Regulations**, adopted on an interim basis by the City of Shoreline in 1995 (**Section 17.28 of the Shoreline Municipal Code**). These regulations provide standards specifying the information to be provided by the developer at the time of application for a preliminary plat (See Attachment B.1, Preliminary Subdivision Submittal Checklist), authority of the City to require additional information or studies prior to preliminary review, and timelines for submission of final plat documents

These King County regulations provide the local standards specifically required from each jurisdiction by the state platting statute, (Plats, Subdivisions and Dedications, RCW 58.17). The state law defines the land use regulations long subdivisions shall be reviewed under, identifies public notice procedure and hearing responsibility, specifies timelines for review and decision, and lists factors to be considered in approving a proposed long subdivision. RCW 58.17.100 requires the Planning Commission to review all preliminary plats, and make recommendations to the City Council to approve or disapprove each proposal, on the basis of conformance of the proposed subdivision to;

A. The general purposes of the Comprehensive Plan, and,
B. Locally adopted planning standards and specifications.

The **Shoreline Zoning Code (Title 18 of the SMC)** provides the zone specific standards that control lot dimensions and the form of any development allowed on a lot.

Titles 16.30 through **16.40** of the **SMC** specify the **Administrative Procedures** and timing of reviews to be followed for each preliminary subdivision application. These code standards implement the requirements of the Regulatory Reform Act and supercede all other regulations specifying review process and timing. The review process to be followed for preliminary subdivisions is considered in detail later in this report.

Title 12.10 of the **SMC** adopts the **King County Road Standards** for use by the City in the design and review of all roads, including those proposed to serve new residential subdivisions.

Title 13.10 of the **SMC** adopts the **King County Stormwater Management Code** (Title 9 of the King County Code, as amended), including the 1995 King County Stormwater Management Manual. This code and the manual are used by the City for the design and review of all stormwater management systems proposed for public and private developments. These code provisions were last modified City Ordinance No. 154, adopted in February 1998, which lowered the threshold for drainage review on a range of projects from 5,000 square feet to 1,500 square feet of new impervious surface.

Title 15.10 of the **SMC** adopted the **Uniform Fire Code.** The fire code is administered on behalf of the City by the Shoreline Fire Department. The City code allows the Fire Department to adopt administrative rules that implement the standards and provisions of the fire code. The Standard Operating Procedures providing minimum access and water availability standards for plats and dwellings were promulgated by the Fire Department under this administrative rules provision.

Title 14.05 of the **SMC** adopted the **King County SEPA Regulations**. These SEPA policies and rules implement the State SEPA rules provided by Chapter 197-11 of the Washington Administrative Code (WAC) and provide substantive authority (in addition to other adopted plan policies) for the imposition of SEPA mitigations on specific project proposals.

6. Comprehensive Plan Designation

The land use design adopted by the 1994 King County Comprehensive Plan designated this property as suitable for medium density urban residential development (Urban Medium (UM) designation, 4-12 residential units per acre). The King County plan was adopted for interim planning purposes by the City of Shoreline during its incorporation process in 1995. In accordance with the requirements of the Growth Management Act, the entire city is designated as an Urban Growth Area by the plan.

No separate description of the UM land use designation assigned to the subject property is provided in the King County plan. As an alternative, the plan provides a range of policies to identify preferred residential development densities and guide the timing, form and provision of services to infill development.

The following King County Plan policies address the form and pattern of new development envisaged for existing residential areas;

U-501 King County shall encourage new residential development to occur in Urban Growth Area locations where facilities and services can be provided at the lowest public cost and in a timely fashion. The urban growth area should have a variety of housing types and prices, including mobile home parks, multifamily development, townhouses and small-lot, single family development.

U-502 King County shall seek to achieve through future planning efforts over the next 20 years, an average zoning density of at least seven to eight homes per acre in the Urban Growth Area through a mix of densities and housing types. A lower density zone may be used to recognize existing subdivisions with little or no opportunity for infill or redevelopment.

U-504 King County should apply minimum density requirements to all urban residential zones of four or more homes per acre.

U-515 Urban residential neighborhood design should preserve historic and natural characteristics and neighborhood uniqueness, while providing for privacy, community space, pedestrian safety and mobility, and reducing the impact of motorized transportation.

U-516 Site characteristics that enhance residential development should be preserved through sensitive site planning tools, such as clustering or lot averaging.

U-517 King County zoning and subdivision regulations should facilitate the creation of usable open space, community facilities and nonmotorized access. Pedestrian mobility should be prioritized and the impact of automobiles on the character of the neighborhood reduced.

U-518 Design variety such as lot size averaging, lot clustering, flexible setback requirements and mixing attached and detached housing is strongly encouraged in single family areas.

U-521 Within the Urban Growth Area, King County zoning and subdivision regulations should require that residential developments, including mobile home parks, provide the following improvements:

- **a.** Paved streets (and alleys if appropriate), curbs and sidewalks, and internal walkways when appropriate;
- **b.** Adequate parking consistent with local transit service levels;
- **c.** Street lighting and street trees;
- **d.** Storm water control;
- **e.** Public water supply; and
- **f.** Public sewers.

7. Zoning Designation

The subject property is currently zoned R-6 (Residential, six dwelling units per acre). This is the most frequently occurring zoning designation found in the City of Shoreline, with approximately 85% of the City being assigned to this zone. The purpose of the residential zones (including R-6) is specified in Subsection 18.04.080 of the Shoreline Municipal Code (SMC),

Residential Zone (SMC 18.04.080)

a. The purpose of the urban residential zone (R) is to implement comprehensive plan goals and policies for housing quality, diversity and affordability, and to efficiently use residential land, public services and energy. These purposes are accomplished by:

   1. Providing in the R-4 through the R-8 zones, for a mix of predominantly single detached dwelling units and other development types with a variety of densities and sizes in locations appropriate for urban densities.

      (Numbers 2 and 3 are not applicable)

   4. Establishing density designations to facilitate advanced area-wide planning for public facilities and services, and to protect environmentally sensitive areas from over development.

b. Use of this zone is appropriate in urban areas, activity centers, or rural activity centers designated by the comprehensive plan or community plans as follows:

   1. The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served, at the time of development, by adequate public sewers, water supply, roads, and other

needed public facilities and services.

8. Procedural History

An application for preliminary formal subdivision of this property was first submitted to the Planning and Development Services Department on March 2, 1998. The application was determined to be complete and site and engineering review of the proposal were completed in mid July of 1998. Review of the proposal under the State Environmental Policy Act (SEPA) was completed on July 13, 1998, when Planning and Development Services issued a Mitigated Determination of Non-Significance (MDNS), (Attachment E). Notification of this threshold determination and a summary of the proposed mitigations were included with all the public notices mailed to adjacent property owners and published in area newspapers. Preliminary public notice of the application was mailed to adjacent property owners on July 15, 1998. Public notice of the proposal was also published in the Seattle Times on July 16th, and in the Shoreline Enterprise. A staff report on the proposal was forwarded to the Planning Commission on August 27, 1998. Finally, in accordance with the requirements of Regulatory Reform, an open record public review hearing before the Planning Commission was held on September 3, 1998.

The Planning Commission hearing included review of applicable development standards in the City subdivision regulations, zoning code and stormwater management manual, together with consideration of public comments about conflict of the proposal with the established character of the neighborhood, traffic impacts, safety of schoolchildren, wetlands and stormwater impacts. After completing this review, the Planning Commission determined that questions remained about the proposal with respect to the proposed number of building lots, stormwater management and the existence of wetlands on the subject property. Based upon these determinations, the Planning Commission passed a motion by six votes to zero to remand the Zevenbergen application back to staff for further review.

Staff conducted the requested analysis of development density, stormwater and wetland issues and forwarded a report to the Planning Commission for consideration at their regularly scheduled meeting held on November 5, 1998. Based upon the analysis presented in the staff report, the Planning Commission determined that the proposed subdivision had the potential to comply with applicable City regulations and passed a motion by six votes to one to recommend approval of the proposal, with conditions, to the Shoreline City Council.

In keeping with the provisions of the Section 16.35 of the Shoreline Municipal Code governing land use hearings and appeals, staff forwarded a report of the Planning Commission review and recommendation to the City Clerk on December 11, 1998. A notice of this action was mailed to all parties of record on December 10, 1998, informing then of the required 14 day period for filing an appeal of the Planning Commission recommendation and/or SEPA threshold determination. On December 23, 1998, a group of 25 neighborhood residents (with Jane Cho acting as contact person) filed an appeal of both the Planning Commission recommendation for preliminary subdivision approval and the Mitigated Determination of Non-Significance (MDNS) issued for this proposal under SEPA.

Following receipt of this combined subdivision and SEPA appeal, the City of Shoreline opted to consolidate both appeal hearings before the Hearing Examiner, and scheduled a public hearing for the evening of Wednesday, February 10, 1999. Based upon consultation between attorneys representing all the parties to the appeal, the Hearing Examiner determined that the hearing for both the appeal of the Planning Commission recommendation and the SEPA threshold determination should be held as a closed record hearing.

The report and decision of the Hearing Examiner was issued on February 24, 1999 (Attachment F) and found that the application should be remanded back to the Planning Commission for a new public hearing that would allow for citizen testimony on both the proposed subdivision and the SEPA MDNS. The exact scope of the process to be followed for reconsideration of this application was subsequently clarified by the Hearing Examiner in a letter dated March 9, 1999 (Attachment G). Working in response to this decision and the request of the applicants (Attachment H), staff scheduled a new open record public hearing before the Planning Commission for Thursday, May 20, 1999. Public notice of this hearing were mailed to all adjacent property owners and parties of record on May 3 (Attachment I) and formal public notice of the hearing was published in the Seattle Times and Shoreline Enterprise newspapers on May 5, 1999.

Based upon requests for delay of this hearing made by both the applicants and neighborhood residents, the Planning and Development Services Department rescheduled the public hearing for June 3, 1999. Public notice of the revised hearing date was mailed to all adjacent property owners and parties of record on May 14 (Attachment J) and new notices were published in the Seattle Times on May 18 and the Shoreline Enterprise newspaper on May 19. This public hearing was opened by the Planning Commission on June 3 and continued to July 15 and July 22, 1999, to allow the continued submission of testimony by the applicant and the submission of testimony by neighborhood representatives and other interested citizens. The hearing was concluded on July 22, 1999. Based upon review of all submitted testimony and the information provided in this report, the Planning Commission voted unanimously to recommend approval of the proposed preliminary subdivision to City Council, subject to conditions. The language of these recommended approval conditions, together with the written findings, conclusions, and recommendations contained in this report, was reviewed and approved by the Planning Commission on July 29, 1999.

9. Public Comment

While no public comment period was required prior to the ~~May 20~~ June 3, 1999 hearing, substantial public comment was received on the Zevenbergen preliminary subdivision prior to the first Planning Commission public hearing held on September 3, 1998. Based upon the present proposal being identical to that reviewed by the Planning Commission at the September hearing, the requirement that public comments be considered as part of the subdivision review process, and the concern of the City that each comment be appropriately considered, the summary and listing of public comments provided in the September staff report have been reproduced in full.

The public comment period for this proposal ran from July 16 to 5:00 PM on August 4, 1998. Title 16.40.050 of the Shoreline Municipal Code (Permit Review Procedures) requires a public comment period of not less than 15 days be provided. At the time the public comment period for this proposal closed, a total of 44 comment letters had been received from neighborhood residents. Comments were submitted by the following people; Earl and Helen Baer (2), Brian C. McCulloch, Mary Holland Leonard, Patricia Knight, Steven Medalia, Michael and Catherine Henderson, Jane and Paul Cho, Ben Douglas, Steven and Barbara Fiske, John and Judith Guich, Donald and Frances Alford, Fran Hamburg, Betty Cruden, J. Wesley Sage, Lillian and David Hancock, Cheryl and Bill Beauneaux/Nugent, Scott Inglebritson, Dick and Carol Greenwood, Ben Snowdon, Frank and Diane Suhara, Nancy Walker, Mark Williams, Virginia Botham, Thelma and Bruce Finke, Paul and Jane Cho and Mary Leonard (2), William Derry, Peter Garrison, Gordon Higgins and 2 others, April Seamon, Ardis Alfrey, Jane Cho and Patti Knight, Judy Collins, Steve and Nancy Jo Rice, Warren Lindgren, Paula and Ed Williams, Michael O'Connell, Victor and Patricia Knight, Robert Kristjanson, Homer and Shirley McKinney, Ken and Diane Cottingham, Roberta M. Moseley, Don Meehan, Clayne and Sharon Leitner, Robert Gardner, and Mark Owen. Staff have reviewed all these letters, identified the issues raised by each person and consolidated them into Table 1 (pages 10, 11 and 12 of this report). Most of the letters received by Development Services were against the proposed subdivision. Only a few letters expressed some support, none without requesting approval conditions such as a reduction in the number of allowed lots.

These comment letters have been labeled as Appendix 3 of this report and are available upon request from the Planning and Development Services Department.

Comment letters were also received from Susan Wierman and Angela Nouwens 6 days after the closure of the 1998 public comment period. These letters have been included with the comment letters received by the August 4 deadline, but the issues each letter raises have not been addressed in Table 1.

Finally, in response to the public notices issued for the (postponed) May 20, and June 3, 1999, public hearing, the City received letters from Mr. Steven Tholl and Ms. Isabel Geraghty opposed to the proposed subdivision. The City also received a letter from Jane Cho requesting postponement of the May 20, 1999 hearing to a later date. These letters have been included with this report as Attachment T.

TABLE 1: SUMMARY OF PUBLIC COMMENTS

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
The proposal will generate notable traffic and noise impacts on the local street system	24	Yes	Yes	The impact of new vehicle trips was addressed through the City requiring curbs, gutters, and sidewalks on public streets bordering the proposal and requiring improvements to the NW 180th Street and 6th Avenue NW intersection.
The development does not provide sufficient vehicle parking and will result in cars parking on public streets	6	Yes	Yes	Zoning regulations require the provision of two parking spaces per single family unit. Each lot in the proposed subdivision will provide at least four spaces (two covered and two uncovered).
The south side of NW 180th is a designated walking path for children going to Sunset Elementary school. This development puts children at risk.	22	Yes	Yes	The proposed development will provide a full curb, gutter and sidewalk along its boundary with NW 180th street. The applicant will also make significant improvements to the NW 180th and 6th Avenue NW intersection and provide two street lights along NW 180th street.
The proposed development will worsen stormwater problems in an area where they are already serious.	24	Yes	Yes	The proposed development is required to provide a fully engineered stormwater collection and detention system. This system must meet all City design requirements. The applicant has also been required to investigate the condition and capacity of the 6th Avenue NW stormwater system.
The eastern portion of the project site was a wetland prior to it being filled by the present owner.	7	No	No	The eastern portion of the subject property was filled under a permit obtained from King County. None of the environmental data currently available to the City identifies the property as possessing a wetland.

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TABLE 1: SUMMARY OF PUBLIC COMMENTS

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
How will the City safeguard child safety during construction of the proposal?	2	Yes	Yes	As part of the final plat approval process, the City requires the applicant to provide full details of all proposed construction. The city can require the applicant to address this specific issue as part of the final plat and site development review process
Stormwater from this project will harm property to the east (including a seasonal stream located between 3rd Ave NW and 6th Ave NW)	3	Yes	Yes	All stormwater flows generated by the proposal will be retained on-site and released into the 6th Ave NW system at a rate that is less than existing (pre-development) conditions.
The size and number of the proposed lots is out of character with the existing neighborhood	29	Yes	Yes	Staff recommend that the proposed number of lots be reduced to the zone minimum of 12 and lots sizes be increased to better fit neighborhood character.
The proposed development will harm the character of the neighborhood by removing significant amounts of existing trees.	6	Yes	Yes	Mitigations currently imposed under SEPA require the applicant to retain all significant trees located outside of identified access road, driveway and building footprints.
The proposal should provide a turnaround to allow proper Fire Department access to interior lots.	4	Yes	Yes	The applicant has revised the design of Access Tract A to provide an emergency vehicle turnaround. Recommended approval conditions require this turnaround to be extended or sprinklers be installed in the houses.
Approval of the proposed development will lead to an increase in property taxes	6	No	No	Property tax levels and calculation methods are outside the City's jurisdiction, being controlled by the King County Assessor and the State.

TABLE 1: SUMMARY OF PUBLIC COMMENTS

Issue	No. of Comments	Addressed by Code?	Addressed by Conditions?	Staff Response
Sunset Elementary is already overcrowded and this new development will place an additional burden on their stretched resources.	6	No	No	The School District does not presently require the City to collect Impact Fees to cover the effects of new residential development on their schools.
The proposal will cause a reduction in air quality through both construction and additional vehicle trips, etc.	2	Yes	No	City regulations require that off-site impacts (including dust) be minimized during construction. State and federal regulations control vehicle emissions.
The City is approving variances to the King County Road Standards that allow more houses to be built in a development	1	Yes	Yes	The adopted road standards are intended to serve as general guidelines for the construction of roads to serve private developments. Any variances are granted based upon review by the City Engineer and the finding that their approval preserves the public interest.
The proposal should be redesigned to reduce the number of houses and driveways fronting on existing public roads.	2	Yes	Yes	A mitigation imposed on the project under SEPA requires that lots fronting on existing public roads make use of joint access driveways whenever possible. A second SEPA mitigation also controls the appearance of houses to be built on lots 4 and 7.
The proposal should receive its own public hearing date, rather than be scheduled with another proposed subdivision.	1	No	No	September 3 was the first hearing date available for both the Zevenbergen and Dohner plats. The Planning Commission can continue a hearing as required.
An EIS should be prepared on this proposal	2	Yes. Adopted regulations specify when an EIS is required.	Yes	City review of the proposal did not identify the existence of significant adverse environmental impacts that could not be appropriately mitigated.

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10. Review Process

For any application proposing the division of a single parcel of land into five or more building lots, the City of Shoreline requires a landowner to apply for a Formal (or Long) Subdivision. The review and approval process to be followed for a long subdivision is more detailed than that required for a short plat. Before they can build any houses, the applicant must go through the Preliminary Approval process, the Final Approval process and submit construction plans for review and approval (under the Site Development Permit process). Information required for the preliminary and final approval processes is summarized in the application checklists included as Attachment B of this report.

Section 16.35 of the Shoreline Municipal Code requires that the following review processes be followed for formal subdivisions:

Action	Review Authority	Appeal Authority and Decision-Making Body
1. Preliminary Long Plat (Subdivision)	Planning Commission	City Council
2. Final Long Plat (Subdivision)	Director	City Council

While the City Council is the approval authority for both Preliminary and Final long subdivision applications, only the preliminary approval process requires public notification of a proposal and the holding of a formal public hearing in front of the Planning Commission (Flowchart 2: Process for Type C Actions, Subsection 16.40.010, Shoreline Municipal Code, Attachment K).

It is through the preliminary subdivision review and approval process that the issues of size, form, and contribution to the community associated with a subdivision proposal are addressed and specific conditions defined for the project in order for it to receive preliminary approval. The final approval and site development review processes focus on the 'nuts and bolts' issues of making the subdivision comply with any special conditions and mitigations and provide for all required services and safety issues in the manner specified by relevant sections of the City code.

The applicant must comply with all conditions of preliminary approval before final plat approval can be granted by the City Council. If the applicant can't, or wishes not to, comply with the conditions of preliminary approval, the proposed subdivision would have to be revised and a new public notice, public comment period and public hearing scheduled in front of the Planning Commission.

ADDITIONAL FINDINGS

11. Subsection 17.08.050 of the city subdivision regulations provides the following standard for the review and approval of subdivision applications;

'Interest of Public Welfare. The proposed subdivision and its ultimate use shall be in the best interests of the public welfare and the neighborhood development of the area and the subdivider shall present evidence to this effect when requested by the City Manager or his/her designee.'

12. The February 24, 1999 decision of the Hearing Examiner ~~has~~ remanded this matter back to the city for a full and complete public hearing on both the subdivision and the SEPA MDNS determination.

13. State law and the Shoreline Municipal Code authorize the use of a Consolidated Open Record Public Hearing.

14. The Planning Commission has jurisdiction in the matter of review of the Preliminary Plat; the SEPA Responsible Official has jurisdiction for the MDNS.

15. The decision of the Hearing Examiner ~~has~~ stated that "careful consideration of the density allowed and the 'best interest of the public welfare and neighborhood development' should be made."

16. The Hearing Examiner found that staff reasonably considered the issues raised by the appellants "except character of community and endangered species".

17. The burden of proof for an application rests with the applicant, who "shall have the burden of establishing that the application is in compliance with applicable city and state ordinances, statutes and laws and regulations."

18. On March 9, 1999 staff meet with the applicants agents to discuss issues and potential opportunities for the resolution of identified difficulties with the proposal. Many issues were discussed including neighborhood character, endangered species and storm water. Staff requested that the applicant address the neighborhood character issue with a legal memorandum.

19. On March 22, 1999 staff meet with some of the appellants to discuss issues and potential opportunities for resolution of identified difficulties with the proposal. Many issues were discussed including neighborhood character, endangered species and storm water.

20. On April 12, 1999, the applicant submitted an additional Technical Information Report addressing storm water issues and ~~has "~~volunteered to design the storm water system for the plat to provide 100-year storm detention~~, which will~~ to reduce flow rates into the North Pond, and to design the storm water system for the plat to the standards recommended by the Department of Ecology for stream bank erosion control in the Puget Sound Basin Stormwater Management Manual (Department of Ecology 1992), Section I-2.9.~~"~~

21. As of the May 14, 1999, the applicant had not submitted additional information addressing the potential impact of the proposed subdivision on endangered species.

22. As of May 14, 1999, the applicant had not submitted additional information about neighborhood character and had not submitted a legal memorandum about the neighborhood character issue as requested by staff.

II. ANALYSIS

1. Zoning Code (Chapter 18, Shoreline Municipal Code)

A. Development Density

The subject property is 105,099 square feet (2.41 acres) in size and zoned R-6 residential (six dwelling units per acre) under the present Zoning Code (Title 18, Shoreline Municipal Code (SMC)). The method for calculating allowable development density for a proposal is provided under subsections 18.12.030, 18.12.070, .080, .085 and .200 of the code. The calculated maximum allowed density for the subject property is 14 lots (after rounding) and is based upon none of the land being submerged (consistent with on-site conditions and the results of the staff analysis of wetlands provided later in this report).

The minimum density allowed on this site is controlled by subsections 18.12.030 and 18.12.060 of the SMC. Minimum allowed density on the site would be 85% of 14 lots, or, 12 building lots. The only possible reductions in the above figures allowed by the zoning code are listed in subsection 18.12.060. This subsection allows for development at densities lower than the allowed minimum only if;

> The presence of an environmentally sensitive area limits the size of the required lots to less than the zone minimum,
> The site contains a national, state or local historic landmark,
> The applicant designs the proposal so additional residences may be placed on it at some time in the future.

The revised plat design submitted by the applicants proposes subdivision of the property to create one fewer than the maximum allowed number of building lots. In keeping with the design standards of the R-6 zone, the applicant has also chosen to construct detached single family residences on each proposed lot.

Residential lot sizes in the immediate vicinity of the proposed development range from over 27,000 square feet to 6,800 square feet in area, with the most frequently occurring lot size appearing to be slightly greater than 8,000 square feet. The method of road access to these lots seems to be evenly divided between lots that front directly onto a public street that forms part of the grid system and lots that are accessed via cul-de-sac roads. While very few new homes have been built in this neighborhood in the last few years, all the houses are maintained to a high standard. The newer homes are typically two floors in height while the older homes are most frequently built on a single level. There appears to be an even distribution of both kinds of homes in the vicinity of the proposed subdivision. The homes located west

of the subject property along NW 180th and 8th Avenue NW are typically larger and more elaborate than those found elsewhere in the neighborhood.

The proposed subdivision would create ~~13~~ 12 new residential building lots with an average size of ~~5,667~~ 6,647 square feet. This is approximately ~~70~~ 83% of the average estimated size of existing lots in the neighborhood. The new homes to be built on these lots would be aimed at the upper end of the housing market with asking prices in the region of $350,000. Any new home would have to comply with the size and dimensional standards provided in subsection 18.12 of the Shoreline Zoning Code. The proposed methods of lot access would be near evenly split between direct access onto public streets and access via a dedicated access road. ~~Seven~~ Six lots would have direct access onto 6th Avenue NW or NW 180th Street, while 7 lots would have street access through a dedicated access road

Based upon the above information, it is apparent that the main differences between the proposed subdivision and existing development in the neighborhood are the size of the proposed building lots and the potential bulk and scale of the proposed new homes on these building lots.

Given the need to maintain the maximum possible number of significant trees on the property and ensure that the proposed development is fully integrated within the existing community ~~development has been determined by the City to fully comply with all applicable regulations, subdivision conditions and SEPA mitigations~~, the Planning Commission recommends ~~staff request~~ that the following conditions be placed on any ~~recommendation for~~ preliminary plat approval;

i. No grading or clearing of the project site shall be allowed until ~~the final subdivision~~ a site development permit has been ~~reviewed and~~ approved by the City of Shoreline. (Condition #2 on Page 27 of this report)

ii. All new homes to be constructed on building lots created by this subdivision shall be a maximum of two stories (above ground level) in height and be of non-uniform color and design. (Condition #17 on Page 28 of this report)

iii. The applicant shall revise the design of the proposed subdivision to provide an eight (8) foot wide landscaped buffer between the northern property boundary and Access Tract A. (Condition #18 on Page 28 of this report)

iv. Prior to final plat approval, the applicant shall submit a report prepared by a certified arborist that provides for the preservation of the maximum number of existing trees on the property that are consistent with the approved development. The arborists report shall also provide for the following requirements:
   i. That any tree identified for removal shall be replaced on site by two (2) native evergreen trees of a minimum of six (6) feet in height.
   ii. That two trees meeting the above specifications shall also be planted on site when the drip line of any tree located within the landscape buffer required by condition No. 18 (above) will be encroached upon by approved site improvements.
   iii. Each tree to be preserved on site shall be evaluated for susceptibility to blow

down. Where blow down is identified as a threat, the report shall specify methods of addressing the problem for each identified tree. Following review and approval by the City, these blow down prevention recommendations shall be implemented for each affected tree at the applicants expense.

iv. Each tree on property abutting Tract A to the north shall be evaluated for susceptibility to blow down. Where blow down is identified as a threat, the report shall specify methods of addressing the problem for each identified tree. Owners of abutting property with potentially affected trees shall determine whether they wish to have the blow down prevention recommendations implemented by the applicant at the applicants expense. (Condition #19 on Pages 28 and 29 of this report)

B. Recreational Space

The closest City of Shoreline park to the proposed development is Shoreview Park, located immediately south of the intersection of NW 175th Street and 6th Avenue NW. While the proposal has been revised to propose the creation of approximately 6,200 square feet ~~sizing of the proposed lots allows the development to meet the Zoning Code standards for the total provision~~ of on-site recreational space, the proposed preliminary subdivision makes no allowance for provision of a tot/children's play area. Subsection 18.14.190 of the Shoreline Zoning Code requires that a tot/children's play area shall be provided as part of the total on-site recreation space if the proposed development is not within one quarter mile of a public park, or, an arterial street must be crossed to reach the park.

In order for this proposal to comply with the provisions of the Zoning Code and safely provide for the recreational needs of children living in the development, the Planning Commission recommends ~~staff request~~ that the following condition for the provision of recreational space be placed upon any recommendation for approval;

i. The applicant shall provide a children's play area of no less than 20' by 20' ~~at the southern end of the proposed turn around of Access Tract A~~ as part of the proposed recreation area. The play area ~~may be dedicated by an easement and~~ shall provide a minimum of one bench for seating, children's play apparatus, and otherwise conform with the requirements of subsection 18.19~~4~~.190 of the Shoreline Zoning Code. (Condition #3 on Page 27 of this report)

C. Wetlands

Both written comment and oral testimony presented on this proposal in 1998 identified the eastern portion of the subject property as being a wetland that was filled by the present owner prior to the 1995 incorporation of Shoreline.

In accordance with the requirements of the Growth Management Act, the City of Shoreline has adopted regulations under Section 18.26 of the Zoning Code protecting designated wetlands from development. In common with other sections of the Zoning Code, these standards were adopted from King County at the time of incorporation in 1995 and represent the latest in a series of regulations adopted by the County (beginning in 1990) designed to protect wetlands.

Wetlands in Shoreline are designated and protected according to their assigned class (a measure of their quality and environmental significance), which is based upon the results of the 1983 King County Wetlands Inventory (as updated in 1990 using the 1987 National Wetlands Inventory maps). This inventory, together with a copy of the King County Sensitive Areas Map Folio (published in December, 1990), and aerial photographs identifying designated Environmentally Sensitive Areas, is routinely used by Planning and Development Services staff to determine the existence of designated wetlands (and other ESA's) on any property proposed for development (or redevelopment) within the City of Shoreline.

Staff consulted all these reference materials as part of the SEPA and subdivision review processes followed for this proposed subdivision. Neither the 1990 Wetlands Inventory or the Sensitive Areas Map Folio show this property as containing a designated wetland. Review of both the aerial photograph based maps and the 1990 Map Folio also found that no part of the Zevenbergen property is designated as Environmentally Sensitive.

Prior to applying for the 1990 King County permit to fill the eastern half of the subject property (0.8 of an acre), the applicant retained a qualified consultant to evaluate his property for the presence of any wetlands. Based upon a field inspection of the property conducted in late November 1989, the consultant concluded that the property lacked all three of the characteristics necessary for classification as a wetland (Attachment L). King County appeared to concur with the consultant's assessment of the eastern portion of the project site. A Mitigated Determination of Non-Significance (MDNS) was issued for the 1990 grading project that made no mention of wetland protection or preservation. The only specified mitigation required the applicant to produce a geotechnical analysis evaluating project site settlement, seismic stability and foundation support prior to it being developed for any new homes.

On May 7, 1999, the applicants submitted a new analysis of the project site performed by Talasaea Consultants on March 31 of this year (Attachment M). No sign of a wetland was found on the property. The applicants also provided the results of a February 19 field investigation of the property conducted by representatives of the Army Corps of Engineers (Attachment N). This letter states that the Corps was unable to conclusively prove that any portion of the lawn (fill) area of the property met the criteria for wetlands. More significantly, the letter also states that any fill and grading of wetlands less than one (1) acre in size would have been legal under the regulations in effect at the time of the filling.

Based upon the above, Planning and Development Services concludes that while the eastern half of the subject property was at one time (heavily) wooded and that while a drainage channel along the eastern property boundary did contain plants found in wetlands, the eastern portion of the project site is not a wetland.

Note: Issues relating to potential impacts upon Boeing Creek and endangered species will be considered under the Surface Water Management section of this report.

2. Road Standards (Title 12, Shoreline Municipal Code)

The King County Road Standards are used by engineering staff for the review of all roads proposed to serve residential subdivisions in the City of Shoreline.

In a July 8, 1998, letter to the agent for this proposal (Attachment O), Planning and Development Services staff determined that the proposed subdivision required the applicants to apply for two variances from the road standards;

a. Section 2.09 of the King County Road Standards (Alleys and Private Access Tracts) requires a 22' paved surface for Access Tract A. The proposed subdivision shows a 20' wide paved surface (identified as 19' by the applicant) and a variance is required unless the pavement surface is widened by 2'.

b. If Access Tract B is to serve lots 1 and 12 (now lot 11) of the proposed plat, it requires, either, a variance from Section 301.3.B. of the King County Road Standards, or, an increase in width to a minimum of 20 feet.

The July 8 letter from staff also noted that in order for the proposed plat to obtain Fire Department approval, the applicant would need to provide a vehicle turnaround in Access Tract A, or, extend the Tract through to NW 180th Street. In keeping with Public Works Department policies, this letter also informed the applicant that a variance from the Road Standards could be requested for such a turnaround. The applicant submitted a written request for the required variances in a letter dated July 22 (Attachment P), and submitted revised plans showing a proposed turnaround and modified Access Tract B (to serve only lot ~~11~~ 10 of the proposed plat) on July 27, 1998.

The criteria provided by the Road Standards for reviewing variances require the Public Works Department to analyze all elements of the proposed private road and driveway system. Working from this review, Public Works concluded that the variance request for use of a turn around could be approved (subject to the turn around meeting Fire Department design specifications), while the request for a variance to allow the use of a 19 feet pavement width was denied. The City Engineer also determined that the public interest would best be served by requiring the proposed access road to be dedicated as a public road, with the width of the proposed access tract being increased (Attachment Q). The applicant chose not to appeal these decisions.

In their appeal of the original Planning Commission recommendation to City Council, the neighbors identified three issues related to the impact of the proposed subdivision on the local road system; Safety of children walking to school, Traffic Safety and Public Safety. Each of these concerns was presented to the Hearing Examiner at the February 10, 1999 public hearing. Based upon review of the King County Road Standards, the approval conditions recommended by the Planning Commission and the mitigations required under SEPA, the Hearing Examiner determined that each of these issues had been adequately addressed by the City (Hearing Examiner Finding #4, Page 11, Attachment F).

Based upon the above review of the existing and proposed road systems to serve the proposed subdivision and testimony submitted at the public hearing of June 3 through July 22, 1999, ~~the findings of the Hearing Examiner~~, the Planning Commission recommends ~~staff request~~ that the following conditions for roadway improvements be placed upon any recommendation for approval;

i. The applicant shall revise the proposed design of Access Tract A to provide a minimum public right of way width of 32 feet. (Condition 4 on Page 27 of this report)

ii. Access Tract A (as revised by other subdivision approval conditions) shall be dedicated to the City of Shoreline as a public right of way. (Condition #5 on Page 27 of this report)

iii. The required public road shall be constructed to the specifications provided in the King County Road Standards. (Condition #6 on Page 27 of this report)

iv. In order to minimize the potential for additional on street parking on public roads, each lot to be created by the proposed subdivision shall provide a minimum of four vehicle parking spaces (two covered and two uncovered). (Condition #7 on Page 27 of this report)

v. As part of the materials required for final approval of the proposed subdivision, the applicant shall submit a traffic control plan that provides for the safe use of the existing public road system by pedestrians and vehicles through all phases of the construction process. (Condition #8 on Page 27 of this report)

vi. All street lights to be installed by the applicant at the intersection of 6th Avenue NW and NW 180th Street, the intersection of Access Tract A and 6th Avenue NW, and at the intersection of Access Tract B and NW 180th Street shall be of the non-glare type. (Condition #20 on Page 29 of this report)

vii. The improvements to the intersection of NW 180th Street and 6th Avenue NW proposed by the applicant shall be redesigned in accordance with the design concept presented by neighbors at the June 3 to July 22 public hearing on the preliminary subdivision (Exhibit No. 27C). All new sidewalks identified in this design shall be provided as part of the intersection improvements. The revised design shall be made available for public review prior to receiving formal approval from the City. (Condition #21 on Page 29 of this report)

On May 21, 1999, the applicant submitted a traffic analysis of the proposed subdivision, prepared by Gibson Traffic Consultants. Mr. Gibson also testified at the June 3 through July 22, 1999 public hearing. ~~, for review and inclusion in this report. Due to the requirement that staff reports be submitted to the review body a minimum of one week in advance of the hearing, staff have not had sufficient time to review this study. The traffic study has, however, been attached to this report as Appendix 3.~~

3. Surface Water Management

Any land use application made within the City of Shoreline that proposes the creation of more than 1,500 square feet of new impervious surface coverage is automatically subject to review under the provisions of the 1995 edition of the King County Stormwater Management Manual. Due to the amount of new impervious surfaces likely to be constructed as part of this proposed subdivision, a Civil Engineer working on behalf of the applicant produced a Technical Information Report (TIR) addressing it's potential stormwater impacts as part of the initial plat application. This study was performed in accordance with the requirements of the Stormwater Manual and found that construction of an on-site stormwater detention system was necessary to conform with adopted standards.

The stormwater system proposed for this subdivision would become part of the 6th Avenue NW stormwater drainage system, which connects to the 175th and 6th Avenue NW stormwater collection facility (the site of the January 1997 sinkhole). Due to the neighborhood not being designated a problem area in the public stormwater collection system, the on-site stormwater detention system proposed by the applicant followed the standard requirements of the Stormwater Manual and was sized to accommodate the 25-year design storm. This design standard requires that any on-site stormwater detention system be sized to accommodate a sufficient volume of stormwater to limit off site stormwater flows during and after the 25 year storm event to existing (pre-development) levels.

While the proposed stormwater detention system design was accepted by City engineering staff as sufficient for allowing public review of the application, the City identified the potential impact of this proposal on the 6th Avenue NW stormwater collection system as being of sufficient concern to warrant imposition of the following mitigation under SEPA;

> Prior to the submission of an application for final plat approval, the applicant shall submit a survey and analysis of the downstream stormwater management system running from the intersection of NW 180th Street and 6th Avenue NE to the intersection of 6th Avenue NE and NW 176th Street. The analysis shall evaluate the adequacy of the present 12" diameter pipe with respect to upstream neighborhood flows currently being collected as well as the flows to be expected from the discharge of the proposed subdivision.

Working in response to the above SEPA mitigation, the applicants submitted an addendum to the original TIR on April 12, 1999. The additional analysis provided in this report, together with it's revisions to the proposed on-site stormwater detention system, has been reviewed by City of Shoreline engineering staff. The findings of this review are attached to this report as Appendix 1.

In their appeal of the November 1998 Planning Commission recommendation to the City Council, neighbors identified two concerns related to the potential stormwater impacts of this proposal. Firstly, that the removal of vegetation and increase in impervious surface coverage resulting from approval of this proposal would result in negative stormwater impacts in the area, and secondly, that a 14 lot subdivision would have a significant

adverse impact on the ability of Boeing Creek to support salmonids (recently placed under the protection of the Federal Endangered Species Act).

In Finding 4 of his report and decision on the appeal (Attachment F, page 11), the Hearing Examiner found that the issue of stormwater impacts had been adequately considered by the City. In the same finding, however, the Hearing Examiner did determine that the issue of the potential adverse impact of this proposal upon endangered species had not been adequately considered.

While the revised stormwater management system design proposed in the TIR addendum of April 12, 1999, proposed additional mitigations for ~~addresses and further mitigates~~ the potential stormwater impacts of this proposal, it ~~does~~ did not explicitly address the impact of this subdivision upon the potential salmonid habitat value of Boeing Creek. This issue was, however, addressed by expert witnesses testifying on behalf of the applicant at the June 3 through July 22, 1999, public hearings and through further mitigations proposed by the applicant and neighbors of the proposal. ~~The applicant had submitted no further information on this issue at the time this report was submitted to the Planning Commission.~~

Based upon the analysis of the proposed stormwater management system provided by city engineering staff in Appendix 1 of this report, and testimony presented at the June 3 through July 22, 1999 public hearing, the Planning Commission recommends ~~staff request~~ that the following conditions be placed upon any recommendation for approval of this preliminary subdivision;

i. The applicant shall increase the proposed installation depth for all stormwater management facilities crossing NW 180th Street so as to accommodate future City of Shoreline Public Works Department drainage Capital Improvement Project. (Condition #12 on Page 27 of this report)

ii. The stormwater system for the plat shall be designed to provide 100 year storm detention and, more specifically, to limit peak rate outflows from the site to 50% of the pre-development flow rates for the two year 24-hour storm flow and to limit peak rate outflows from the site to the pre-development flow rate for the 10 and 100 year 24 hour storms. (Condition 13 on Pages 27 and 28 of this report).

iii. The applicant shall revise the proposed stormwater management system plans to provide water quality control for all surfaces subject to vehicular access through installation of a biofitration swale and ~~by removing the proposed coalescing~~ FROP-T oil/water separator ~~and providing water quality control for all surfaces subject to vehicular access~~. These facilities shall be designed using the ~~Use the~~ Department of Ecology manual, or an equivalent manual, to ~~implement a design that~~ safeguards the water quality of Boeing Creek. (Condition 14 on Page 28 of this report).

iv. The applicant shall provide revised plans that accurately and adequately address the drainage problems of the houses located at 637, 631, 617, 611, and 605 NW 182nd Street. (Condition 15 on Page 28 of this report).

4. Other Facilities and Utilities

A. Sidewalks

Consistent with existing subdivision regulations and road standards, installation of a full curb, gutter and sidewalk along the property boundary with NW 180th Street and 6th Avenue NW is required by the City of Shoreline for this application to be considered for preliminary approval. The applicant will also install a full curb, gutter and sidewalk along the southern (and eastern) side of proposed Access Tract A.

~~Those requirements were considered by the Hearing Examiner in the February 10 appeal and found to be adequate for the purpose of protecting public safety (Finding 4, page 11, Attachment F).~~
Based upon testimony received at the public hearing of June 3 through July 22, the Planning Commission recommends that sidewalks installed as part of the required intersection improvements be designed in accordance with approval condition No. 21 (below).

B. Sewers

The certificate of sewer availability provided with this application (Attachment R) indicates that this service is available in sufficient capacity to serve the proposed development. As a condition of service, the Shoreline Wastewater Management District has required the applicant to extend the nearest sewer mainline to serve the proposal.

C. Water Supply and Fire Standards

The subject property is currently served by a 6" water main located in 6th Avenue NW that is described as 'substandard' on the Certificate of Water Availability issued by Seattle Public Utilities (Attachment D). This certificate requires, as a condition of service, that prior to any building permits being issued, the applicant must design and install approximately 385 feet of 4" diameter water main in an easement running from 6th Avenue NW to Lot 11 of the proposed subdivision. The water system does, however, currently meet fire flow requirements with over 1,000 gallons per hour (GPH) being available for 2 hours or more.

The proposed long plat was reviewed on March 13, 1998, by Jeff LaFlam of the Shoreline Fire Department for conformance with fire access and water fire flow requirements (Attachment S). This review found two deficiencies with the proposed subdivision design;

a. An approved vehicle turnaround should be provided, or, the 20' access roadway (Access Tract A) should be continued through to NW 180th Street.

b. The size of the water main serving the new fire hydrant should be either, a minimum of 8" diameter for system deadends greater than 50' in length, or, 6" diameter for deadends of less than 50', or, 6" diameter if the system is a complete loop design.

While Fire Department regulations require that each of these deficiencies be corrected, they do allow the applicant some choice in deciding how to achieve compliance. The turnaround proposed by the applicant in their July 27 engineering plans has a total length of 65' rather than the 70' required by the Fire Department Standard Operating Procedures. To comply with the code, the applicant may either, install sprinkler systems in each house built on lots 1, 2, 3, 4, 12, 13 and 14, or, extend the turnaround length an additional five (5) feet to the east. The specified water system improvements must be made, however, using one of the design approaches allowed under b, above. Based upon Fire Department review of the fire access and fire flow systems proposed for this subdivision, together with the decision of the Hearing Examiner, the Planning Commission recommends ~~staff request~~ that the following conditions be placed upon any recommendation for approval;

i. The applicant shall either, install fire sprinkler systems in each house built on the lots being provided road access by Access Tract A, or, extend the length of the proposed vehicle turnaround eastwards by a minimum of 5 feet. (Condition #9 on Page 27 of this report)

ii. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a system with deadends greater than 50' in length, or, 6" diameter pipe for deadends of less than 50' in length, or 6" diameter pipe if the system is a complete loop design. (Condition #10 on Page 27 of this report)

5. SEPA

As a formal (long) subdivision proposing the creation of fourteen (14) residential building lots, the current application was automatically subject to environmental review under the State Environmental Policy Act (SEPA). The Planning and Development Services Department completed preliminary SEPA review of this proposal on July 13, 1998, when a Mitigated Determination of Non-Significance (MDNS) was issued for this proposal (Attachment E).

This SEPA threshold determination was appealed by neighbors of the proposed development on December 23, 1998 and reviewed by the Hearing Examiner on February 10, 1999. In his report and decision of February 24, 1999 (Attachment F), the Hearing Examiner found that two problems existed with the SEPA process and threshold determination followed by the City for this proposal;

Firstly, The review process followed by the City was flawed in that members of the public were not explicitly granted the opportunity to comment upon the SEPA threshold determination at an open record public hearing.

Secondly, That the potential significant adverse environmental impacts of this proposal upon community character and endangered species were not appropriately considered.

Based on these defects identified by the Hearing Examiner, ~~staff requests that~~ the Planning Commission ~~hold~~ held a joint public hearing with the City of Shoreline Pro-

tem Hearing Examiner on June 3 through to July 22, 1999. ~~Use of a joint public hearing with the Hearing Examiner will allow the scope of the hearing to be extended~~ to explicitly allow for the submittal of public testimony on the July 13, 1998, SEPA MDNS (Attachment E).

In addition to satisfying procedural requirements, the holding of this hearing ~~submittal of testimony on this threshold determination will~~ allowed the Pro-tem Hearing Examiner to prepare a report to the SEPA Responsible Official advising them on the need for further review or modification of the July 13 MDNS. This report was submitted to the SEPA Responsible Official on August 5, 1999. Based upon the recommendations of this report, the SEPA Responsible Official will determine whether to retain the July 13, 1998, MDNS, issue a modified final threshold determination, or, withdraw the MDNS and issue a Determination of Significance for the proposed subdivision.

III. CONCLUSIONS AND RECOMMENDATIONS

1. Summary

The Zevenbergen ~~proposed~~ preliminary ~~Zevenbergen~~ Subdivision application has been revised to propose the creation of 13 residential building lots, rather then the 14 lots ~~is essentially identical to that~~ previously reviewed by the Planning Commission on September 3 and November 5, 1998. While this proposal may be found to comply with the numeric standards of the Zoning Code and propose the provision of suitable public facilities to meet the requirements of the Road Standards, Stormwater Management Manual and Fire Code, the Planning Commission recommends that specific conditions be placed on any decision for preliminary approval of this proposal made by the City Council. ~~it has been found by the Hearing Examiner to raise issues that have yet to be addressed by the applicant.~~ These recommended conditions are based upon review of the full record produced at the June 3 through July 22, 1999 public hearing, and directly address the issues of community character and impact on endangered species identified by the Hearing Examiner, together with the concerns raised by neighbors of the proposal.

~~Finding No. 4 on page 11 of the Hearing Examiners Report (Attachment F), states that while the July 13 MDNS addressed the majority of concerns raised by the appellants in an appropriate manner, the issues of character of the community and endangered species were not properly dealt with. Although both these issues may be addressed through SEPA, the issue of impact of the proposal on the existing character of the community also falls under the review authority of the Planning Commission. This authority is provided to the Planning Commission by both the allowable density standards (minimums and maximums) of the Zoning Code and the requirements of the City Subdivision Regulations (Title 17, SMC).~~

A. Conclusions

1. The ~~application has failed to demonstrate that the~~ proposal, as ~~submitted with 14~~ revised to create 13 lots and provide approximately 6,000 square feet of recreational space, is consistent with the character of the neighborhood.

2. The revised ~~applicant has failed to demonstrate that the~~ 13 lot proposal, ~~as submitted with 14 lots~~ with the approval conditions recommended by the Planning Commission, will be ~~is~~ able to provide adequate on site management of storm water quality to meet the city's obligation to salmonids in Boeing Creek under the ESA.

3. The revised ~~applicant has failed to demonstrate that the~~ proposal, ~~as submitted with 14 lots,~~ makes adequate provision for recreational space and ~~is able to provide for~~ a children's play area, as required by the Shoreline Municipal Code.

4. The applicant has failed to provide any analysis (as required by King County in 1990 and the City of Shoreline in the July 1998 SEPA MDNS) that the existing fill placed on the eastern portion of the property is suitable for supporting house foundations and other improvements required for residential development.

5. The revisions to the Zevenbergen preliminary subdivision agreed to by the applicant, together with the preliminary approval conditions recommended by the Planning Commission, ~~A reduction in the number of proposed building lots, from 14 to 1213, would~~ provide the potential for enhanced compatibility of the proposal with the neighborhood, and reduction or elimination of all impacts on the community identified by Planning Commission review. ~~additional land for on site management of storm water quantity and quality and for the provision of a children's play area~~.

B. Recommendation

The Planning Commission hereby additionally finds that;

(a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
(b) The public use and interest will be served by the platting of such subdivision and dedication, if the plat is amended by the conditions outlined below.

And recommends that the Shoreline City Council approve the Zevenbergen Preliminary Subdivision, subject to the findings of fact, the above conclusions, and the following conditions;

1. The applicant shall re-design the proposed subdivision to reduce the number of proposed lots from 14 to ~~12~~ 13 and provide ~~for~~ a ~~corresponding increase in the area of each remaining lot, with the exception of the lot proposed for the existing residence and garage~~ recreational area in accordance with the revised subdivision design proposed at the June 3, 1999, public hearing (Exhibit No. 3.C.).

2. No grading or clearing of the project site shall be allowed until ~~the final subdivision~~ a site development permit has been ~~reviewed and~~ approved by the City of Shoreline.

3. The applicant shall provide a children's play area of no less than 20' by 20' ~~at the southern end of the proposed turn around of Access Tract A~~ as part of the proposed recreational area. The play area ~~may be dedicated by an easement and~~ shall provide a minimum of one bench for seating, children's play apparatus, and otherwise conform with the requirements of subsection 18.19~~4~~.190 of the Shoreline Zoning Code.

4. The applicant shall revise the proposed design of Access Tract A to provide a minimum public right of way width of 32 feet.

5. Access Tract A (as revised by other subdivision approval conditions) shall be dedicated to the City of Shoreline as a public right of way.

6. The required public road shall be constructed to the specifications provided in the King County Road Standards.

7. In order to minimize the potential for additional on street parking on public roads, each lot to be created by the proposed subdivision shall provide a minimum of four vehicle parking spaces (two covered and two uncovered).

8. As part of the materials required for final approval of the proposed subdivision, the applicant shall submit a traffic control plan that provides for the safe use of the existing public road system by pedestrians and vehicles through all phases of the construction process.

9. The applicant shall either, install fire sprinkler systems in each house built on the lots being provided road access by Access Tract A, or, extend the length of the proposed vehicle turnaround eastwards by a minimum of 5 feet.

10. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a system with deadends greater than 50' in length, or, 6" diameter pipe for deadends of less than 50' in length, or 6" diameter pipe if the system is a complete loop design.

11. Prior to final plat approval, the applicant must establish a Homeowners Agreement ~~a set of covenants, conditions, and restrictions (CC and R's)~~ that provides for the maintenance and repair of all commonly owned facilities, such as landscaping, streetlighting, bioswale and the recreational ~~children's play~~ area, by property owners in the proposed development. The~~se CC and R's~~ Homeowners Agreement must be reviewed and approved by the City Attorney and recorded with the King County Auditor.

12. The applicant shall increase the proposed installation depth for all stormwater management facilities crossing NW 180th Street so as to accommodate a future City of Shoreline Public Works Department drainage Capital Improvement Project.

13. The stormwater system for the plat shall be designed to provide 100 year

storm detention and, more specifically, to limit peak rate outflows from the site to 50% of the pre-development flow rates for the two year 24-hour storm flow and to limit peak rate outflows from the site to the pre-development flow rate for the 10 and 100 year 24 hour storms.

134. The applicant shall revise the proposed stormwater management system plans to provide water quality control for all surfaces subject to vehicular access through installation of a biofitration swale and ~~by removing the proposed coalescing~~ FROP-T oil/water separator ~~and providing water quality control for all surfaces subject to vehicular access~~. These facilities shall be designed using the ~~Use the~~ Department of Ecology manual, or an equivalent manual, to ~~implement a design that~~ safeguards the water quality of Boeing Creek.

145. The applicant shall provide revised plans that accurately and adequately address the drainage problems of the houses located at 637, 631, 617, 611, and 605 NW 182nd Street.

156. In recognition of the issue of possible impact of the proposed development on Boeing Creek as potential habitat for salmonids protected under the Federal Endangered Species Act, the applicant must produce evidence satisfactory to the City that the proposed project will have no impact on the habitat potential of Boeing Creek prior to any approvals for development of the site being issued.

17. All new homes to be constructed on building lots created by this subdivision shall be a maximum of two stories (above ground level) in height and be of non-uniform color and design.

18. The applicant shall revise the design of the proposed subdivision to provide an eight (8) foot wide landscaped buffer between the northern property boundary and Access Tract A.

19. Prior to final plat approval, the applicant shall submit a report prepared by a certified arborist that provides for the preservation of the maximum number of existing trees on the property that are consistent with the approved development. The arborists report shall also provide for the following requirements:
    i. That any tree identified for removal shall be replaced on site by two (2) native evergreen trees of a minimum of six (6) feet in height.
    ii. That two trees meeting the above specifications shall also be planted on site when the drip line of any tree located within the landscape buffer required by condition No. 18 (above) will be encroached upon by approved site improvements.
    iii. Each tree to be preserved on site shall be evaluated for susceptibility to blow down. Where blow down is identified as a threat, the report shall specify methods of addressing the problem for each identified tree. Following review and approval by the City, these blow down prevention recommendations shall be implemented for each affected tree at the applicants expense.

iv. Each tree on property abutting Tract A to the north shall be evaluated for susceptibility to blow down. Where blow down is identified as a threat, the report shall specify methods of addressing the problem for each identified tree. Owners of abutting property with potentially affected trees shall determine whether they wish to have the blow down prevention recommendations implemented by the applicant at the applicants expense.

20. All street lights to be installed by the applicant at the intersection of 6th Avenue NW and NW 180th Street, the intersection of Access Tract A and 6th Avenue NW, and at the intersection of Access Tract B and NW 180th Street shall be of the non-glare type.

21. The improvements to the intersection of NW 180th Street and 6th Avenue NW proposed by the applicant shall be redesigned in accordance with the design concept presented by neighbors at the June 3 to July 22 public hearing on the preliminary subdivision (Exhibit No. 27C). All new sidewalks identified in this design shall be provided as part of the intersection improvements. The revised design shall be made available for public review prior to receiving formal approval from the City.

22. Prior to the issuance of a site development permit, the applicant shall submit stormwater (rain), erosion, and sedimentation control plans to minimize the off-site transportation of sediment during the construction of site improvements and new homes.

NOTE: The following Appendices and Attachments are now referred to collectively as "Attachment G" available in the Council Office.

Appendices

Appendix 1.	Staff Engineering Analysis of the Stormwater Management System Proposed for the Zevenbergen Subdivision
Appendix 2.	Traffic Access/Safety Study for Proposed Residential Plat Gibson Traffic Consultants, May 12, 1999

The following appendices are available upon request from the Planning Commission Secretary

Appendix 3.	Citizen Comment Letters from the 1998 Public Review Process
Appendix 4.	Staff Report to the Planning Commission, August 17, 1998
Appendix 5.	Staff Report to the Planning Commission, October 21, 1998
Appendix 6.	Shoreline Fire Department Standard Operating Procedures

Attachments

Attachment A	Site Plan
Attachment B	Preliminary and Final Subdivision Submittal Checklists

Attachments (cont.)

NOTE: The following Attachments are now referred to collectively as "Attachment G" available in the Council Office.

Attachment C	Vicinity Map
Attachment D	Certificate of Water Availability
Attachment E	SEPA MDNS, July 13, 1998
Attachment F	Report and Decision of the Hearing Examiner, February 24, 1999
Attachment G	Letter from Hearing Examiner, March 9, 1999
Attachment H	Letter from Courtney Kaylor, Phillips, McCullogh, Wilson, Hill and Fikso, April 23, 1999
Attachment I	Public Hearing Notice, May 3, 1999
Attachment J	Public Hearing Notice, May 14, 1999
Attachment K	Process Flowchart for 'Type C' Actions
Attachment L	Letter to John Zevenbergen from Dames and Moore, November 27, 1989
Attachment M	Letter from Talasaea Consultants, March 31, 1999
Attachment N	Letter from Army Corps of Engineers
Attachment O	Letter from Development Services to Mr. Gary Cooper regarding Road Variances, July 8, 1998
Attachment P	Request for Variances from Adopted Road Standards, July 22, 1998
Attachment Q	Public Works Road Standards Variance Review
Attachment R	Certificate of Sewer Availability
Attachment S	Fire Department Review of Proposed Subdivision, March 13, 1998
Attachment T	Letters Received in Response to May 1999 Public Notices

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CITY OF SHORELINE

Appeal of Planning Commission Recommendation for Approval of Revised Zevenbergen Application for Preliminary Long Subdivision Plat of Hayley Estates Subdivision

(File Number 1998-00390)

The Shoreline citizens, project neighbors and appellants whose names appear below request that the City Council deny approval of the June 3, 1999 revised preliminary subdivision submitted by or on behalf of John and Nancy Zevenbergen (the "Zevenbergens"). The Zevenbergens' June 3, 1999 revised subdivision application would authorize development in the City of Shoreline's R6 zone of 12 lots less than 7,200 square feet and one lot over the established minimum lot size. The City of Shoreline's land use code to which the Zevenbergens' June 3, 1999 revised subdivision application is vested establishes a minimum lot size of 7,200 square feet. See Ordinance 170 (enacted and effective September 28, 1998 and subsequently extended, hereinafter "Ordinance 170").

I. BACKGROUND

At the time the Zevenbergens submitted their original preliminary subdivision application to the City, on or about March 2, 1998, the City land use code's minimum lot size in the R6 zone was 5,000 square feet. The Zevenbergens' preliminary subdivision application requested approval of a 14 lot subdivision. All of the lots in the Zevenbergens' original subdivision proposal were 5,000 square feet or more but, with one exception, less than 7,200 square feet.

Shoreline Municipal Code (SMC) 18.14.180(A) which was in effect at the time of the Zevenbergens' original and revised subdivision applications provides that a residential development of "more than four units in the R zones . . . shall provide recreation space for leisure, play and sport activities as follows:

> 1. Residential subdivision and townhouses developed at a density of eights units or less per acre - 390 square feet per unit . . . ."

SMC 18.14.180(B) adds that "Any recreation space located outdoors shall:

> 1. Be of a grade and surface suitable for recreation;
> 2. Be on the site of the proposed development;
> 3. Have no dimensions less than 20 feet (except trail segments);
> 4. In a single detached or townhouse subdivision development with at least 5,000 square feet of required outdoor recreation space, have a street roadway or parking area frontage along 10 to 50 percent of the perimeter (except trail segments);
> 5. Be centrally located and accessible and convenient to all residents of the development; and
> 6. Be connected by trail or walkway to any existing or planned community park, public open space or trail system, which may be located on adjoining property."

For a 14 unit development, SMC 18.14.180(A) requires 5,460 square feet of recreation space (390 x 14 = 5460). For a 13 unit development, SMC 18.14.180(A) requires 5,070 square feet of recreation space (390 x 13 = 5070). SMC 18.14.180)(B)(1) through (5) mandate that recreation space be of a grade and surface suitable for recreation, that it be located on site, that it

have dimensions no less than 20 feet (except trail segments), that where outdoor recreation space of at least 5,000 square feet is required that the recreation space have a street roadway or parking area frontage along 10 to 50 percent of the perimeter (except trail segments), and that it be centrally located and accessible to all residents of the development.

The Zevenbergens' March 2, 1998 subdivision application did not provide 5,460 square feet of recreation space as required by SMC 18.14.180(A). The Zevenbergens' March 2, 1998 subdivision application also did not comply with the outdoor recreation space requirements mandated by SMC 18.14.180(B)(1) through (5). At the time the City enacted Ordinance 170 (September 28, 1998), the Zevenbergens' subdivision application still failed to provide the recreation space and other requirements of SMC18.14.180(A)(1) and (B)(1) through (5). The Planning Commission's recommendation to the City Council regarding the Zevenbergens' June 3, 1999 revised subdivision application does not make findings of fact or conclusions of law that the Zevenbergens March 2, 1998 subdivision application complied with the SMC 18.14.180(A)(1) and (B)(1) through (5). On the record, no such findings or conclusions could have been made.

At the June 3, 1999 Planning Commission hearing, the Zevenbergens' representatives voluntarily revised the Zevenbergens' subdivision application and requested Planning Commission approval of a 13 unit subdivision with a recreation space of approximately 6,000 square feet. But at the time the Zevenbergens chose to revise their subdivision application, the minimum lot size established by City Ordinance in the R6 zone in which the Zevenbergens seek to develop was and remains 7,200 square feet. The Zevenbergens' revised subdivision application does not comply with the minimum lot size requirements in effect as of June 3, 1999, the date they submitted their revised application to the Planning Commission. The Planning Commission did not make findings of fact or conclusions of law that the Zevenbergens' revised application complied with Ordinance 170 which establishes a 7,200 square feet minimum lot size in the R zones. On the record, no such findings or conclusions could have been made.

II. WASHINGTON'S VESTING LAW

Resolution of this appeal turns on application of Washington's vesting rights doctrine and RCW 58.17.033 to the two subdivision applications submitted by the Zevenbergens. "In Washington, 'vesting' refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the applications's submission." Noble Manor Company v. Pierce County, 133 Wn.2d 269, 275, 943 P.2d 1378, 1381 (1997) (emphasis added).

"At common law, this state's doctrine of vested rights entitled developers to have a land development proposal processed under the regulations in effect at the time a complete building permit application was filed. The doctrine at common law was extended to a number of different types of permits, but it was never extended to applications for preliminary plat approval or short plat approval." Noble Manor Company v. Pierce County, 133 Wn.2d at 275, 943 P.2d at 1381 (internal citation omitted).

In 1987, the Washington Legislature codified the vested rights doctrine regarding building permits and enlarged the doctrine so that it also applied to subdivision and short subdivision applications. Laws of 1987, ch. 104. In Noble Manor, the Washington Supreme Court quoted the following from the Final Legislative Report on the bill enacting RCW 58.17.033:

> The [vested rights] doctrine is applicable if [1] the permit application is sufficiently complete, [2] complies with existing zoning ordinances and building codes, and [3] is filed during the period the zoning ordinances under which the developer seeks to develop. Once a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes. West Main Associates v. Bellevue, 106 Wash.2d 47, 720 P.2d 782 (1986).

133 Wn.2d at 277, 943 P.2d at 1383 (emphasis supplied), quoting Final Legislative Report, 50th Legis, 1st Reg. Sess. 255. The citation in the Legislative history of RCW 58.17.033 to West Main Associates v. Bellevue, a 1986 decision of the Washington Supreme Court, demonstrates tellingly that under Washington's vested rights doctrine more is necessary to vest development rights than the mere filing of a "complete" application. West Main Associates held the following:

> The Washington doctrine protects developers who file a building permit that (1) is sufficiently complete, (2) complies with existing zoning ordinances and building codes, and (3) is filed during the period the zoning ordinances under which the developer seeks to develop are in use. If a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes.

106 Wash.2d 47, 51, 720 P.2d 782, 785 (1986) (emphasis supplied). See also Erickson & Associates, Inc. v. McLerren, 123 Wn.2d 864, 868, 872 P.2d 1090, 1093 (1994) (same three points). The Legislative history of RCW 58.17.033 and the common law vested rights doctrine confirm that three "requirements" must be satisfied in order for subdivision development rights to vest under RCW 58.17.033:

> (1) that the applicant file a fully completed application;
> (2) that the proposed subdivision comply with existing zoning ordinances and building codes; and
> (3) that subdivision be filed during the period the zoning ordinances under which the developer seeks to develop are still in use.

In Noble Manor, the Washington Supreme Court clarified a further point: whether an application vests "(1) to all uses allowed by the zoning and land use laws on the date of the application for the short term plat should be vested at the time of the application, irrespective of the uses sought in the application; or (2) an applicant should have the right to have the uses disclosed in their application considered by the county or local government under the laws in existence at the time of the application. We conclude the second alternative comports with prior

vesting law." 133 Wn.2d at 283, 943 P.2d at 1385. The Court reasoned that this result fulfilled the purpose of the vesting doctrine, which is to protect the reasonable expectations of developers against fluctuations in land use law. Accordingly, "we conclude that what is vested is what is sought in the application." 133 Wn.2d at 284, 943 P.2d at 1386. "Our construction of the statute [RCW 58.17.033] makes 'permit speculation' less probable." 133 Wn.2d at 283, 943 P.2d at 1386. Thus, a developer whose subdivision application does not provide recreation space is not entitled to claim that its subdivision application should be treated as though it requested recreation space use because such a use was allowable or even required under existing law.

In Erickson & Associates, Inc. v. McLerren, the Washington Supreme Court acknowledged "[d]evelopment interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted." 123 Wn.2d at 874, 872 P.2d at 1096. If a vested right is granted too easily, it would also encourage "permit speculation." Ibid. "Permit speculation" "inimical to the public interest" would be assured if a developer could freeze existing zoning and building codes by submitting an application that does not comply with substantive requirements of existing zoning and building codes so long as the developer submits a revised application which conforms with zoning and building codes which have since changed. If this were the result, vesting law would become a "catch me if you can game" in which the developer's rights always vest and the public interest is always subverted.

II. ZEVENBERGEN APPLICATIONS ARE SUBJECT TO 7,200 SQUARE FEET MINIMUM LOT SIZE UNDER ORDINANCE 170

A. March 2, 1998 Subdivision Application.

The Zevenbergens' March 2, 1998 subdivision application provided for 14 lots on 2.41 acres and no recreation space. SMC 18.14.180(A) mandates that for a development of this size there must be a recreation space of at least 5, 460 square feet (390 x 14 = 5,460). SMC Section 18.14.180(B)(1) through (5) mandates that "Any recreation space located outdoors shall:

1. Be of a grade and surface suitable for recreation;
2. Be on the site of the proposed development;
3. Have no dimensions less than 20 feet (except trail segments);
4. In a single detached or townhouse subdivision development with at least 5,000 square feet of required outdoor recreation space, have a street roadway or parking area frontage along 10 to 50 percent of the perimeter (except trail segments); and
5. Be centrally located and accessible and convenient to all residents of the development ...

Because the Zevenbergens' March 2, 1998 subdivision application failed to provide the recreation space mandated by SMC 18.14.180(A), the Zevenbergens' March 2, 1998 subdivision application also violated SMC 18.14.180(B)(1) through (5).

SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5) are part of Title 18 of the Shoreline Municipal Code. Title 18 is the City's zoning ordinance.

The City Council cannot approve a subdivision application that violates the City's zoning ordinance. The Zevenbergens' March 2, 1998 subdivision application failed to provide the recreation space mandated by SMC 18.14.180(A) and in turn failed to comply with SMC 18.14.180(B)(1) through (5). "The applicant bears the burden of complying fully with applicable land use requirements." Friends of the Law v. King County, 123 Wn.2d 518, 529, 869 P.2d 1056, ____ (1994). As a matter of law, the City would have been obligated to reject the Zevenbergens' March 2, 1998 subdivision application if it had been submitted to the Council for action. Loveless v. Yantis, 82 Wn.2d 754, 760-761, 513 P.2d 1023 (1973) (preliminary plat must be rejected if it contains clear zoning violations).

The Washington vested rights doctrine protects developers who file a subdivision application that (1) is sufficiently complete, (2) complies with existing zoning ordinances and building codes, and (3) is filed during the period the zoning ordinances under which the developer seeks to develop are in use. If a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes. West Main Associates v. Bellevue, 106 Wash.2d 47, 51, 720 P.2d 782, 785 (1986). The Zevenbergens' March 2, 1998 subdivision application cannot satisfy the second requirement of Washington's vested rights doctrine because that application failed to comply with SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5). Accordingly, the Zevenbergens' March 2, 1998 subdivision application is not vested to zoning ordinances and building codes in effect on March 2, 1998.

Ordinance 170 establishes a minimum lot size of 7,200 square feet in the R6 zones. At the time Ordinance 170 was enacted, the Zevenbergens' March 2, 1998 subdivision application remained in violation of SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5). Because the Zevenbergens' March 2, 1998 subdivision application is not vested to zoning ordinances and building codes in effect as of that date, the Zevenbergens' March 2, 1998 subdivision application is subject to and does not comply with Ordinance 170.

B. June 3, 1999 Subdivision Application.

There are two independent reasons the City Council must disapprove the Zevenbergens' June 3, 1999 revised subdivision application. First, the Zevenbergens' March 2, 1998 subdivision application did not comply with zoning laws in effect on that date and the Zevenbergens' June 3, 1999 revised subdivision application does not succeed to rights which the March 2, 1998 subdivision application did not vest. Second, the Zevenbergens' chose to submit a revised subdivision application on June 3, 1999; that revised application must but does not comply with

zoning laws and building codes in effect as of the date of the revised application, specifically Ordinance 170.

1. Faced with the reality that their March 2, 1998 could not be approved because it violated SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5), the Zevenbergens chose to submit a revised subdivision application to the Planning Commission at the Commission's June 3, 1999 meeting. The revised application would authorize the establishment of 12 lots which do not conform to the City's 7,200 square foot minimum lot size in the R zones and one lot over that minimum lot size plus, for the first time, a recreation space that appears to comply with SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5).

The Zevenbergens claimed that the Planning Commission should recommend approval of their June 3, 1999 nonconforming subdivision application on the ground that their revised application is vested to zoning ordinances in effect on March 2, 1998. Appellants requested the Planning Commission recommend disapproval of the Zevenbergens' revised June 3, 1999 subdivision application because it violates minimum lot size requirements of Ordinance 170 and because the Zevenbergens' March 2, 1998 subdivision application did not vested to zoning laws and building codes in effect on March 2, 1998 due to violations of SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5).

In their deliberations on the Zevenbergens' revised June 3, 1999 subdivision application, the Planning Commission focused on only one of the three "requirements" of Washington's vested rights doctrine–whether the March 2, 1998 subdivision application was sufficiently complete for review. Certain Planning Commission members expressed the view that they felt bound by the fact that Planning Commission staff treated the Zevenbergens' March 2, 1998 subdivision application as sufficiently complete for consideration and action.

Planning Commission members overlooked that there are three separate "requirements" that a subdivision application must satisfy in order to vest then existing zoning laws and building codes. Washington's vested rights doctrine protects developers who file a subdivision application that (1) is sufficiently complete, (2) complies with existing zoning ordinances and building codes, and (3) is filed during the period the zoning ordinances under which the developer seeks to develop are in use. West Main Associates v. Bellevue, 106 Wash.2d 47, 51, 720 P.2d 782, 785 (1986). As Section III.A of this appeal demonstrates, the Zevenbergens' March 2, 1998 subdivision application did not comply with SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5) and their March 2, 1998 subdivision application is not vested to zoning laws in effect on March 2, 1998.

Under Washington law, a subdivision "applicant bears the burden of complying fully with applicable land use requirements." Friends of the Law v. King County, 123 Wn.2d 518, 529, 869 P.2d 1056, ____ (1994). As a matter of law, the City would have been obligated to reject the Zevenbergens' March 2, 1998 subdivision application if it had been submitted to the Council for action because it violated the recreation space requirements of SMC 18.14.180(A) and SMC

18.14.180(B)(1) through (5). Loveless v. Yantis, 82 Wn.2d 754, 760-761, 513 P.2d 1023 (1973) (preliminary plat must be rejected if it contains clear zoning violations). The Zevenbergens' revised June 3, 1999 subdivision application is subject to Ordinance 170. The Zevenbergens' revised June 3, 1999 subdivision application must be disapproved because it includes 12 lots which violate the 7,200 square feet minimum required by Ordinance 170.

2. There is an additional and independent reason why the City Council must disapprove the Zevenbergens' revised June 3, 1999 subdivision application. Without advance notice to the public, the Zevenbergens' voluntarily chose to submit a revised subdivision application to the Planning Commission at its meeting on June 3, 1999. Their revised subdivision application is subject to all zoning laws and building codes in effect on the date on which the Zevenbergens voluntarily submitted their revised application, including but not limited to Ordinance 170. The Zevenbergens' revised June 3, 1999 subdivision application includes 12 lots which violate the 7,200 square feet minimum required by Ordinance 170. Because the Zevenbergens' subdivision application as revised violates Ordinance 170, it must be disapproved.

IV. CONCLUSION

Washington's vested rights doctrine protects legitimate interests of developers in fixing rights to develop a project in compliance with zoning and building laws in effect at the time a complete application is filed that complies with existing zoning laws and building codes. On the other side, Washington courts acknowledge that the practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted Erickson & Associates, Inc. v. McLerren, 123 Wn.2d at 874, 872 P.2d at 1096. In addition, if a vested right is granted too easily, it would also encourage "permit speculation." Ibid. "Permit speculation" "inimical to the public interest" would be assured if a developer could freeze local zoning and building codes by submitting an application that does even not comply with substantive requirements of existing zoning and building codes but nonetheless retain an early vesting date when it submits a revised application after zoning laws have changed.

The Zevenbergens' subdivision applications illustrate too well the risk of "permit speculation." The Zevenbergens' March 2, 1998 subdivision application did not comply with the recreation space requirements of SMC 18.14.180(A) and SMC 18.14.180(B)(1) through (5). The Zevenbergens nonetheless have asserted that their unlawful subdivision application vests development rights that have been determined through Ordinance 170 to be inimical to the public interest, 12 lots less than 7,200 square feet in the R zones.

Appellants respectfully request that the City Council reject the Zevenbergens' June 3, 1999 subdivision application.

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Attachment C

BEFORE THE CITY COUNCIL FOR THE CITY OF SHORELINE

In the matter of the application of JOHN AND NANCY ZEVENBERGEN for approval of a preliminary plat known as the Plat of Hayley Estates.	ZEVENBERGENS' PREHEARING MEMORANDUM

I. INTRODUCTION

John and Nancy Zevenbergen (the "Zevenbergens") submitted a complete application to subdivide their property into 14 lots on March 2, 1998, nearly two years ago. Since that time, the Zevenbergens have agreed to a number of conditions requested by City staff and a group of neighbors who are Appellants in this matter. Specifically, at the Planning Commission hearing held in June and July 1999, the Zevenbergens agreed to reduce the number of residential lots to 13, provide a common recreational area in place of the fourteenth residential lot, design the stormwater system to provide detention superior to 100-year-storm detention, provide a bioswale for water quality treatment of stormwater runoff, construct street improvements according to designs proposed by a group of neighbors who are Appellants in this matter and plant two native evergreen trees for every one removed, among many other things. These voluntary conditions go far beyond what could have been legally required to address concerns voiced by Appellants.

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Now, Appellants claim that the project is not vested to the zoning code in effect when the application was submitted, but instead must comply with the subsequently enacted 7200 square foot minimum lot size requirement. Appellants claim that the plat did not vest because the plat map submitted with the application does not show a common recreation area. Appellants also rely on the voluntary conditions that the applicant agreed to implement in response to staff comments and Appellants' concerns, claiming that the project is not vested because the Zevenbergens' agreement to these conditions constituted a new or revised application. Neither of these claims have any merit.

Appellants' claim that the plat is not vested because the application did not show common recreational space must fail for three reasons. First, state law requires only that a complete application must be submitted in order for a plat application to vest. Here, it is undisputed that the Zevenbergens submitted a complete application on March 2, 1998. Second, common recreational space is not required by the City code as interpreted by City staff. Third, even if the Code required common recreational space, the plat application was not required to show that space in order to vest.

Appellants' claim that the Zevenbergens submitted a new or revised application that changed the vested status of the plat also must fail, for two reasons. First, there is simply no factual basis for this claim. To the contrary, the Zevenbergens' representatives clearly stated at the Planning Commission hearing that they were not submitting a new or revised application. Second, the City's subdivision code specifies very limited circumstances under which a new plat application occurs for purposes of vesting. None of these circumstances are present here.

For these reasons, the Zevenbergens request that the City Council reject this appeal and approve the preliminary plat as unanimously recommended by the Planning Commission.

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II. FACTS

On March 2, 1998, the Zevenbergens submitted an application to the City for approval of a preliminary plat to subdivide a 2.41-acre parcel into 14 single-family residential lots. The application included all of the information required by the Shoreline City Code ("SCC"). Therefore, in accordance with SCC §16.40.040, City staff deemed the application complete. *See* Application; Staff Report to Planning Commission, June 3, 1999 ("June 3, 1999 Staff Report"), p. 7. [1]

The preliminary plat contained lots ranging from 5,132 to 18,766 square feet, with an average lot size of 6,603 square feet. The zoning code in effect when the complete application was submitted permitted lots of 5,000 square feet. All of the lots in the preliminary plat met this minimum lot size requirement. June 3, 1999 Staff Report, pp. 1, 15.

In addition, the preliminary plat provided 390 square feet of recreational space on each lot. This recreational space satisfied the requirements of the zoning code as interpreted by City staff. Staff Report to Hearing Examiner, February 10, 1999 ("February 10, 1999 Staff Report"), pp. 14-15; June 3, 1999 Staff Report, p. 16; Transcript of Meeting of Shoreline Planning Commission ("June and July 1999 Hearing Transcript"), pp. 121-122 (Senior Planner James Holland discusses staff's interpretation of recreational space requirement).

On July 13, 1998, the City issued a mitigated determination of nonsignificance ("MDNS") under the State Environmental Policy Act ("SEPA") (Chapter 43.21C RCW). The City also issued a notice of application and accepted public comment on the plat from July 16, 1998 to August 4, 1998. On September 3, 1998, the Planning Commission held an open record public hearing on the plat. June 3, 1999 Staff Report, pp. 7-8.

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[1]/ The record in this matter includes, but is not limited to, the application, staff reports, all materials submitted at the Planning Commission hearing, a recording of the hearing, a transcript of the hearing and written arguments submitted by the parties. Resolution 130, Exhibit A, Chapter I, §9.4; Chapter II, §12.1.

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On September 28, 1998, the City enacted Ordinance 170, which reduced the minimum lot size in residential zones to 7,200 square feet. Ordinance 170 specifically provides, however, that "[t]his Ordinance shall not be construed or interpreted to invalidate any vested right of a completed application filed with the City prior to the effective date of this Ordinance." Ordinance 170, Section 5. Accordingly, Ordinance 170 did not apply to the project.

On November 5, 1998, the Planning Commission recommended approval of the preliminary plat. June 3, 1999 Staff Report, p. 7.

Various parties, including Appellants in this action, appealed the MDNS and the recommendation of approval to the Hearing Examiner. Among other things, the appellants claimed that the project was too dense, that common recreation space should be provided and that the stormwater detention system should be designed to detain the 100-year storm. On February 24, 1999, the Hearing Examiner found procedural defects in the hearing process and remanded the matter for a new public hearing on the preliminary plat and MDNS. Appeal of Mitigated Determination of Nonsignificance Relating to Zevenbergen Application, dated December 23, 1999 ("December 23 1999 Appeal"); June 3, 1999 Staff Report, pp. 7-8; February 10, 1999 Staff Report, pp. 6-7, 12-15.

In accordance with this decision, a consolidated open record public hearing was held before the Planning Commission and Hearing Examiner on June 3, July 15 and July 22, 1999. At the June 3 hearing, the Zevenbergens voluntarily agreed to a number of conditions that were recommended in the staff report and that had been previously requested by members of the public, including Appellants in this matter. Among other things, the Zevenbergens agreed to reduce the number of residential lots to 13, provide a common recreational area in place of the fourteenth residential lot, design the stormwater detention system to detain the 100-year storm and provide a bioswale for water quality treatment of stormwater runoff. June 3, 1999 Staff Report, pp. 24-26, Appendix 1 (conditions recommended by staff,

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including bioswale); June and July 1999 Hearing Transcript, pp. 102-103 (Catherine Shaffer, one of Appellants in this matter, states "the first major condition that we are concerned about and we are reiterating one of staff is minimum density" and discusses additional conditions, including common recreation space, 100-year storm detention and a bioswale, requested by Appellants); June and July Hearing Transcript, pp. 27-42 (Gary Cooper, the applicant's representative, indicates applicant's agreement to several conditions in response to staff recommendations and public comment.).

After the June 3 hearing, the Zevenbergens requested a meeting with Appellants in the hopes of reaching an amicable agreement with Appellants regarding the plat. At the July 15 and 22 hearings, the Zevenbergens voluntarily agreed to a number of conditions requested by Appellants at that meeting. *See* Planning Commission Exhibit 26C, Letter from Courtney A. Kaylor to Jane Cho, July 7, 1999; June and July 1999 Hearing Transcript, p. 79 (applicant's representatives met with neighbors and agreed to a number of conditions).

At the July 15 hearing, the Appellants presented a new list of additional conditions they wanted the City to impose as conditions of the plat. At the July 22 hearing, the Zevenbergens agreed to many of these conditions. Among other things, the Zevenbergens agreed to construct street improvements according to a design produced by Appellants, provide a buffer between a project roadway and neighboring homes and plant two native evergreen trees for every one tree removed. Planning Commission Exhibit 17C, Additional Conditions (list of additional conditions requested by neighbors); June and July 1999 Hearing Transcript, pp. 102-103, 113-118 (Catherine Shaffer, one of Appellants in this matter, reviews additional requested conditions); June and July 1999 Hearing Transcript, pp. 158-160, 163-169 (applicant agrees to a number of additional requested conditions).

The Zevenbergens' representatives made it very clear throughout the hearings that they were not submitting a new application or revising their previous application but rather were agreeing to various

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conditions in response to staff recommendations and public comment. Specifically, at the June 3, 1999, hearing, Gary Cooper testified that the applicant took all the information from the first Planning Commission meeting, the appeal process, subsequent public comment and the staff report and addressed all of the items that were raised. June and July 1999 Hearing Transcript, p. 27. Also at the June 3, 1999 hearing, the applicant's attorney testified:

> *This is not a revised application.* These are proposed mitigation measures . . . that we are presenting for the Planning Commission and the Hearing Examiner to adopt if they feel they're necessary and that they address concerns related to the plat approval or impacts under SEPA.

June and July 1999 Hearing Transcript, p. 39 (emphasis added).

At the July 15, 1999, hearing, the applicant's attorney testified that "[t]he applicant has no objection to most of the conditions recommended by staff and in fact has incorporated nearly all of them into the illustrative map that has been marked Exhibit 3C and into its presentation tonight and at the last hearing." *Id.* at p. 75. The applicant's attorney also stated that "Gary Cooper and I requested a meeting with representatives of the neighbors in an effort to resolve the differences about the plat. And, as a result of this meeting we agreed not to object to the neighbors request for certain additional plat conditions[.]" *Id.* at p. 79; *see also* Planning Commission Exhibit 26C, Letter from Courtney A. Kaylor to Jane Cho, July 7, 1999. In addition, the applicant's attorney stated,

> I think the applicant has really gone out of its way to try to address all the issues that have been raised by the neighbors. Again, traffic safety, we've consolidated the driveways, we've provided a turnaround location within the driveways to address the safety of students. We've provided a park. We've provided a children's play area. We've provided more landscaping trees for screening than are required by the zoning code. I think we have made significant efforts to address concerns that are related to how this plat will look and how it will fit in with the community.

June and July 1999 Hearing Transcript, pp. 81-82.

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In addition, at the July 22, 1999, hearing, the following exchange occurred in which the applicant clearly stated, and the Planning Commission and Hearing Examiner accepted, that the addition of a recreational area in place of the fourteenth residential lot was not a new or revised application:

> A Commissioner: I would like to clarify – perhaps I am the only one who is confused in this regard. *The current proposal – has that been amended by the applicant from 14 to 13*?
>
> Ms. Kaylor: *No, it hasn't; however, the applicant has suggested that he would not object to a condition from the Planning Commission replacing one of the lots with a recreational area.*
>
> * * *
>
> Chair Kuhn: I don't know – I've heard we had an original application for 14; we have a staff recommendation for 12 with conditions, we have the applicant saying we can do this, we can do this, we'll do this, we'll do this, we'll do this, we'll do this—
>
> Ms. Bendor: -- 13.
>
> Chair Kuhn. Yes, but that has been talked, it hasn't been concrete.
>
> Ms. Bendor: *Yes but it's not a formal application.*
>
> Chair Kuhn: *No.*
>
> Ms. Bendor: OK. . . .

Id. at pp. 155-156 (emphasis added). [2]

As these portions of the hearing transcript make abundantly clear, the Zevenbergens did not submit a new or revised application during the hearings before the Planning Commission as Appellants claim. Instead, they agreed to implement various mitigation measures in response to staff requests and public comment.

At the conclusion of the open record hearing, the Planning Commission voted unanimously to recommend approval of the preliminary plat to the City Council. *Id.* at pp. 258-259 (roll call). The

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[2]/ The transcript of this discussion prepared by the appellants was incorrect in several respects. The applicant is submitting a corrected transcript of this discussion (along with other relevant sections of the transcript that the applicant has not yet reviewed for errors) as Attachment A to this brief. The applicant reserves the right to object to other inaccuracies in the transcript as they are discovered.

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Planning Commission adopted findings, conclusions and recommendations reflecting its decision on July 29, 1999.

On August 5, 1999, the Hearing Examiner issued a written decision recommending that the SEPA threshold determination should be an MDNS. On September 29, 1999, City Staff issued a notice of the Planning Commission recommendation and reissued the MDNS.

On October 12, 1999, Appellants appealed the Planning Commission recommendation to the City Council. The MDNS was not appealed.

III. DISCUSSION

A. Appellants' claim that the plat is not vested because the application did not show a common recreation area is without merit.

1. The plat is vested under state law, which requires only that a complete application must be submitted in order for a plat application to vest.

The plat is vested under state law, which requires only that a complete application must be submitted in order for a plat application to vest.

The vesting of plats is governed by RCW 58.17.033, which was enacted in 1987. RCW 58.17.033 provides, in pertinent part:

> (1) A proposed division of land . . . shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city or town official."
>
> (2) The requirements for a fully completed application shall be defined by local ordinance.

Under the plain terms of the statute, all that is required to vest a plat is the submission of a complete application, as defined by local ordinance.

The requirements for a complete application are defined by Shoreline Municipal Code ("SMC") §16.40.040. This code section provides that an application is complete when "all information required

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for the application, as specified in Appendix A, has been provided." Appendix A is a one-page document requesting general information. The City has also prepared a list of items to be included in preliminary plat applications that is used by City staff. The items on this list are not necessary to render an application complete for purposes of RCW 58.17.033, however, because they have not been adopted by ordinance. *See* RCW 58.17.033 ("requirements for a fully completed application shall be defined by local *ordinance*" (emphasis added)); SMC §16.40.040.

In this case, it is uncontested that the Zevenbergens submitted a complete application in March 1998. *The appeal in this matter does not claim that the application is incomplete.* Nor could it based on the facts in the record. Specifically, on March 2, 1998, the applicant submitted an application on the form shown at Appendix A to SMC §16.40.040 with all relevant information provided. In addition, although not required for a complete application under RCW 58.17.033 or SMC 16.40.040, the applicant submitted all of the items included on the list used by City staff. [3] City staff deemed the application complete and processed it as required by the SMC. [4]

Accordingly, under RCW 58.17.033 and SMC §16.40.040, the plat application is vested to the zoning and other land use controls in effect on March 2, 1998, the date a complete application was submitted.

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[3]/ The application materials, which include oversize maps, are part of the record in this matter under Resolution 130, Exhibit A, Chapter II §12.1.

[4]/ The SMC provides that, if the application is incomplete, the City must notify the applicant of the deficiencies in writing within 28 days of receiving the permit application. SMC §16.40.040. If the application is complete, then the City must issue a notice of application, which initiates the review process. SMC §16.40.050.A. Here, City staff issued a notice of application for the plat, listing March 2, 1998 as the application date. The City has continued to process the plat application under the zoning code and land use regulations in effect on March 2, 1998. Under the doctrines of waiver and estoppel, the City cannot reverse its position at this late date, as Appellants request that it do in this appeal. *See Dombrosky v. Farmers Ins. Co. of Washington*, 84 Wn.App.245, 255-256, 928 P.2d 1127 (1996) (elements of waiver and estoppel).

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2. The plat application was not required to show common recreational space to vest because common recreational space is not required by the City code, as interpreted by City staff.

The plat application was not required to show common recreational space to vest the plat because common recreational space is not required by the City code, as interpreted by City staff.

Shoreline Municipal Code ("SMC") §18.14.180 requires that residential subdivisions developed at a density of eight units or less per acre must provide 390 square feet of recreational space per unit that: (1) is of a grade and surface suitable for recreation; (2) is on the site of the proposed development; (3) has no dimensions less than 20 feet; (4) has a street roadway or parking area frontage along 10 to 50 percent of the perimeter; (5) is centrally located and accessible and convenient to all residents of the development; and (6) is connected by trail or walkway to any existing or planned community park, public open space or trail system. Nowhere does SMC §181.14.180 state that the recreational space must be shared in common by all the residences.

City staff has interpreted this code section to allow the required recreation space to be provided on individual lots. February 10, 1999 Staff Report, pp. 14-15; June 3, 1999 Staff Report, p. 16; June and July 1999 Hearing Transcript, pp. 121-122 (Senior Planner James Holland discusses staff's interpretation of recreational space requirement). Staff's interpretation is reasonable and the City Council would be acting well within the scope of its discretion to adopt this interpretation. *See Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wn.App.436, 440, 836 P.2d 235 (1992), *review den.* ("It is a well established rule of statutory construction that considerable judicial deference should be given the construction of an ordinance by those officials charged with its enforcement.").

In addition, the Zevenbergens were entitled to rely on staff's interpretation of the recreational space requirements for purposes of vesting. *See e.g., Friends of the Law v. King County*, 123 Wn.2d 518, 869 P.2d 1056 (1994). In *Friends of the Law*, a citizens group claimed that a plat application did not vest

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because the application did not show building setback lines. The applicant acknowledged that the county code required building setback lines on preliminary plat applications but argued that the requirement was not enforced. The Court found that, in light of the county's enforcement practices, the county ordinance in effect when the plat was submitted was vague with regard to the requirements for a complete application. In addition, the applicant attempted in good faith to comply with these uncertain requirements. Therefore, the application was vested to the land use regulations in effect when it was submitted under RCW 58.17.033. *Friends of the Law, supra*, 123 Wn.2d at 523-525.

Similarly here, the Zevenbergens relied on staff's interpretation of the recreational space requirements in designing the plat. The applicant designed the plat to comply with the open space requirements of the City code, as interpreted by City staff. The plat map submitted with the application complied with SMC §18.14.180 by including at least 390 feet of recreational space within each lot. This space was of a grade and surface suitable for recreation (essentially flat). The space was on the site of the development. The space had no dimensions less than 20 feet (dimensions of lots are all larger than 50 by 100 feet). The space had street frontage along 10 to 50 percent of the perimeter (each lot borders a street or access tract). The space was centrally located and accessible to all residents (the space was centrally located in relation to each home and each resident had easy access to their recreational space). Finally, the space was connected (by sidewalks) to any nearby park or open space or trail system. The City may not take the position that common recreational space was required at this late date, as Appellants request that it do in this appeal. *See Friends of the Law, supra*, 123 Wn.2d at 523-525; *Adams v. Thurston County*, 70 Wn.App. 471, 479, 855 P.2d 284 (1993) (All that is required for vesting of a plat application is the submission of a complete application, as defined by local ordinance. A local ordinance defining complete application cannot "add contingent requirements, not determinable at the time the application is filed and not within the control of the proponent of the project.").

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Accordingly, Appellants' argument that the plat did not vest because it did not provide common recreational space must be rejected.

3. Even if the zoning code requires common recreational space, the plat application was not required to show that space in order to vest.

Even if the zoning code requires common recreational space (which, under the staff interpretation, it does not), the plat was not required to show that space in order to vest.

As discussed above, RCW 58.17.033 requires only that a complete application be submitted in order to vest a plat. The statute does not require that the plat conform to the requirements of the zoning code or other land use regulations in order to vest. This additional requirement cannot be implied. *See Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997) ("When the words in a statute are clear and unequivocal, this court is required to assume the Legislature meant exactly what it said and apply the statute as written.").

In addition, in *Friends of the Law v. King County*, the Court held that a complete application vests a plat under RCW 58.17.033 even if the plat as originally applied for does not comply with the requirements of the zoning code or other land use regulations in effect when the application was submitted. 123 Wn.2d 518, 869 P.2d 1056 (1994). The Court rejected a citizens' group's argument that a plat did not vest because it was not in full compliance with the requirements of the zoning code relating to lot size averaging. The county hearing examiner specifically found that the plat application at issue violated the county code requirements relating to lot size averaging because it improperly counted right-of-way as lot area in its calculations. The hearing examiner then found, however, that the plat would comply with the county code if the right-of-way was maintained as open space until the zoning requirement changed. On these facts, the Court held that the "application did vest upon submission. The Council did not abuse its discretion in approving [the applicant's] preliminary plat application *subject to*

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modifications which will bring it into compliance with all applicable zoning requirements." *Id.* at p. 529 (emphasis added).

The Court explained that "[i]n enacting RCW 58.17.033, the Legislature placed the authority for defining the requirements for vesting solely in the hands of local governments. If all of the requirements of the local zoning ordinance dealing with vesting are met, the application will vest." *Friends of the Law, supra*, 123 Wn.2d at 526, fn. 4. The Court further stated:

> A preliminary plat application is meant to give local governments and the public an approximate picture of how the final subdivision will look. RCW 58.17.020(4). *It is to be expected that modifications will be made during the give and take of the approval process.* Although it is up to local governments to decide what level of specificity they will require from a developer in its initial application [citation omitted], they may not cause the vesting of the application to be contingent on future events or decisions, nor make the application process so odious that completion is nearly impossible. [Citations omitted.] *Once a completed application has been submitted, it is to be judged under the laws in effect at the time of submission. If the applicant can show that the plat, with the proper conditions and modifications, will comply with those laws, it will be approved.* If not, it will be rejected and the process may begin again.

Id. at 528-529 (emphasis added); *see also Association of Rural Residents v. Kitsap County*, -- Wn.App.--, 974 P.2d 863 (1999), *petition for review granted* (Court held that plat was vested to laws and regulations in effect on date a complete application was submitted but violated the county's Interim Urban Growth Area development regulation and GMA because it constituted urban growth outside an urban growth area).

In sum, under *Friends of the Law*, a complete application is all that is required for a plat to vest. The fact that the plat application does not comply with the zoning code is immaterial to the question of vesting. Instead, if the plat application can be conditioned to comply with the zoning ordinance in effect on the date of application, then it will be approved.

None of the three cases cited by Appellants in their appeal support their argument to the contrary. In the first case, *Noble Manor Company v. Pierce County*, the Washington Supreme Court held that the filing of a complete short plat application vested not only the right to subdivide but also the right to

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develop the use requested in the application. 133 Wn.2d 269, 278, 943 P.2d 1378 (1997). The Court discussed the history of the vesting doctrine, stating that the common law doctrine required, among other things, that applications comply with existing zoning ordinances in order to vest. *Id.* at 275. *Noble Manor* does not state that RCW 58.17.033 contains such a requirement, however. *See id.* at 276 (quoting RCW 58.17.033). (Indeed, any such statement would have been dicta because there was no allegation in *Noble Manor* that the plat in question did not comply with existing zoning requirements.) To the contrary, the Court in *Noble Manor* stated that its decision was consistent with its earlier decision in *Friends of the Law*. *Noble Manor*, 133 Wn.2d at 280.

In addition, in a vesting case that followed *Noble Manor*, *Schneider Homes, Inc. v. City of Kent*, 87 Wn.App. 774, 780-781, 942 P.2d 1096 (1997), the Court of Appeals expressly rejected the claim that an application must comply with existing zoning in order to vest. In *Schneider Homes*, the Court rejected the claim that the plat application at issue did not vest because it required a planned unit development ("PUD"), the equivalent of a rezone. The Court held that whether the PUD was a rezone was irrelevant because all that the petitioner claimed was the vested right to have his application considered under the laws in effect when it was submitted, which allowed a PUD. Similarly here, all the Zevenbergens claim is the right to have their application reviewed and considered under the zoning code in effect when it was submitted, which allows lots of 5,000 square feet or more. If the plat, *as conditioned*, meets the requirements of that code, then the plat must be approved. *See Friends of the Law, supra,* 123 Wn.2d at 528-529.

The other two cases cited by Appellants – *West Main Associates v. City of Bellevue* and *Erickson & Associates, Inc. v. McLerran* – did not involve plats and did not address RCW 58.17.033. Specifically, in *West Main Associates v. City of Bellevue*, the Court held that Bellevue's ordinance delaying the vesting of building permit applications violated due process. 106 Wn.2d 47, 52, 720 P.2d 782 (1986). In

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Erickson & Associates, Inc. v. McLerran, the Court upheld the City of Seattle's municipal code provision governing the vesting of master use permits. 123 Wn.2d 864, 877 (1994). [5] Accordingly, these cases are irrelevant here.

In this case, even if the City code requires common open space, the application was not required to show common open space in order to vest the plat. Instead, all that was required for the plat to vest was the filing of a complete application. If the application did not comply with the open space requirements of SMC §18.14.180, the proper procedure was for the City to condition the plat to comply with those requirements. As discussed above, the plat as submitted complied with the City code requirements relating to open space, as interpreted by City staff, by providing open space within each lot. Nevertheless, in order to address certain neighbors' concerns regarding recreational space and the density of the project, the Zevenbergens agreed to provide a common open space area. The agreement was incorporated into a condition of approval in the Planning Commission recommendation to the City Council. Planning Commission Recommendation, p. 26, Condition 1. Based on that condition, the Planning Commission found that the plat complied with the SMC requirements relating to open space. Planning Commission Recommendation, p. 17. [6]

For these reasons, Appellants' argument that the plat did not vest because the application did not show common open space must be rejected.

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[5]/ Appellants imply that this case held that the common law requirement that an application as submitted comply with existing zoning requirements was developed to prevent "permit speculation." The Court said no such thing. Instead, the Court indicated that the timing of vesting – when a complete application is filed – would prevent permit speculation because the filing of a building permit application "demonstrated substantial commitment by the developer" to the project. *Id.* at p. 874. Similarly, the filing of a complete plat application demonstrates the developer's commitment to the project.

[6]/ Appellants allege that the Planning Commission did not find that the plat application complied with SMC §18.14.180. To the contrary, the Planning Commission found that the plat application, as conditioned, met the requirements of that section. *See* Planning Commission Recommendation, p. 17.

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B. The Zevenbergens' agreement to implement mitigation measures did not constitute a new or revised application changing the vested status of the project.

1. There is no factual basis for the claim that the Zevenbergens submitted a new or revised application.

There is no factual basis for the Appellants' claim that the Zevenbergens "voluntarily" submitted a new or revised application.

The applicant's representatives made it very clear throughout the hearing that they were not submitting a new application or revising their previous application but rather were agreeing to various conditions in response to staff and public comment. June and July 1999 Hearing Transcript, pp. 27 (applicant's agent indicates agreement to conditions in response to staff recommendations and public comment), 39 (applicant's attorney testifies that there is no revised application), 75 (applicant has incorporated conditions recommended by staff), 79 (applicant will not object to conditions requested by neighbors), 81-82 (applicant's attorney outlines conditions that address neighbors' concerns), 102-103 and 113-188 (one of Appellants request additional conditions), 155-156 (discussion among Planning Commission, Hearing Examiner, staff and applicant regarding lack of new application); 158-160, 163-169 (applicant agrees to many of the additional conditions requested by Appellants); *see also* discussion at pp. 4-7 of this brief, *supra*. In addition, the applicant did not submit a new application form or a new application fee prior to or during the June and July 1999 Planning Commission hearing. *See* June and July 1999 Transcript, pp. 156-157.

In short, the Zevenbergens did not submit a new or revised subdivision application at the Planning Commission hearing.

2. Under the standards of the City code, no new plat application occurred for purposes of vesting.

No new plat application occurred for purposes of vesting under the standards contained in the City code.

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Under the City code, a new plat application for purposes of vesting occurs only if: (1) applicant-generated modifications are made; (2) not in response to technical staff review, throughout the public process or from examiner conditions; that (3) result in substantial changes, including the creation of additional lots or elimination of open space. King County Code, §19.36.085, adopted by SMC §17.05.010. All three of these criteria must be met in order for a new plat application to occur for purposes of vesting. King County Code, §19.36.085.

In this case, none of the criteria in the City code are met. First, no applicant-generated modifications to the plat occurred. Instead, the Zevenbergens agreed to conditions requested by City staff and Appellants. June and July 1999 Hearing Transcript, pp. 27 (applicant's agent indicates agreement to conditions in response to staff recommendation and public comment), 75 (applicant has incorporated conditions recommended by staff), 79 (applicant's attorney indicates applicant will not object to conditions requested by neighbors), 81-82 (applicant's attorney outlines conditions that address neighbors' concerns), 102-103 and 113-188 (one of Appellants requests additional conditions), 158-160, 163-169 (applicant agrees to many of the conditions requested by Appellants); Planning Commission Exhibit 26C, Letter from Courtney A. Kaylor to Jane Cho, July 7, 1999; *see also* discussion at pp. 4-7 of this brief, *supra*.

Second, all of the modifications were made in response to staff review or citizen comment received throughout the public process. Every word in an ordinance must be given meaning in order to avoid rendering any language superfluous. *City of Seattle v. Williams*, 128 Wn.2d 341, 349, 908 P.2d 359 (1995). Thus, the City Council must read the second criteria so that it includes modifications made not only in response to staff review or examiner conditions, but also modifications "throughout the public process" – such as those made in response to public comment. In this case, the applicant agreed to all of the mitigation measures or modifications at issue in response to requests by staff or the public in public

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comment or at the appeal hearings. June and July 1999 Hearing Transcript, pp. 27 (applicant's agent indicates agreement to conditions in response to staff recommendation and public comment), 75 (applicant has incorporated conditions recommended by staff), 79 (applicant's attorney indicates applicant will not object to conditions requested by neighbors), 81-82 (applicant's attorney outlines conditions that address neighbors' concerns), 102-103 and 113-188 (one of Appellants requests additional conditions), 158-160, 163-169 (applicant agrees to many of the conditions requested by Appellants); Letter from Courtney A. Kaylor to Jane Cho, July 7, 1999; *see also* discussion at pp. 4-7 of this brief, *supra.*

Third, none of the modifications resulted in significant changes to the plat In this case. It is a general principle of construction that the express mention of one thing in an ordinance implies the exclusion of another. *Boise Cascade Corp. v. Washington Toxics Coalition*, 68 Wn.App. 447, 455, 843 P.2d 1092 (1993). Accordingly, in the third criteria, the identification of the creation of additional lots and elimination of open space as "substantial changes" implies that opposite modifications, such as a reduction in number of lots and addition of open space are not substantial changes. In this case, the applicant agreed to decrease the number of residential lots, increase open space and numerous other conditions in response to staff recommendations and neighborhood concerns. *See* June and July 1999 Hearing Transcript, pp. 81-82.

Accordingly, no new application was made for purposes of vesting. The City Council must reject Appellants' claim to the contrary.

IV. CONCLUSION

For these reasons, the Zevenbergens request that the City Council reject the appeal in this matter. The Zevenbergens also request that the City Council approve the preliminary plat as unanimously recommended by the Planning Commission.

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DATED this 11th day of January, 2000.

PHILLIPS McCULLOUGH WILSON HILL & FIKSO

By: Courtney Kaylor
John C. McCullough, WSBA #12740
Courtney A. Kaylor, WSBA #27519
Attorneys for John and Nancy Zevenbergen

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ATTACHMENT A

Chair Kuhn: Let me preface your presentation with a request that you identify the exhibit to which you are referring and identify, if germane, to whether the exhibit pertains to the subdivision application or the SEPA hearing.

Mr. Cooper: Each topic?

Chair Kuhn: Each exhibit. Okay?

Mr. Cooper: Okay.

A Commissioner: Or both.

Chair Kuhn: Or both.

Mr. Cooper: I'll tell you, I'll tell you when we start.

Chair Kuhn: Thank you.

Mr. Cooper: Ready?

Chair Kuhn: Yup.

Mr. Cooper: Okay. We're going to start with, yes, oh I'm sorry.

A Commissioner: Excuse me.

Mr. Cooper: I was going to start with exhibit 3C and a portion of it is to SEPA, a portion of it is to Planning, so we'll start.

A Commissioner: He doesn't have to identify if it's relevant to both, does he?

Mr. Cooper: Well, I, there's only really one thing on this it's going to go to _____. As you've described we're attempting to put in 14 single family homes on 2.41 acres. First thing I wanted to say is that we've, we've taken all the information that we have from the original meeting in front of you, from the Hearing Examiner, and that appeal process, the information that has come in since then from the public, the information that has come from Staff in their report. We've addressed all 15 of these items and that you will see as we go through all 15 have been addressed and that, in our opinion, have been solved over and above what is required.

Starting with 3C exhibit in reference to density and exhibit 1A which gives you the idea of how you get to the result of density which is 2.41 acres and a zone of six per acre, comes to 14.46 units. And how you divide that (coughing) 14.5 and you go down to 14 lots. The minimum is 12

plat by the City Council. And the reason we are requesting that is that King County Code Section 19.16.010 which has been adopted by the City provides that an applicant must complete site improvements prior to approval of the final plat unless the applicant chooses to bond for them. And so it is consistent with the city code to permit site improvements prior to approval of the final plat after, of course, approval of plans by staff.

The next condition that we'd like to request a modification to is Condition 3 of the staff report regarding the play area and all we're requesting on this item is that the condition be modified to provide the play area be located within the on-site recreation area and that is per code requirement, SMC18.14.190.

Finally condition 15 in the staff report regarding endangered species and Hearing Examiner Bendor, I believe, you asked a question about this condition at the last meeting regarding the need for further study of endangered species. We request that this condition to be eliminated because it has already been satisfied. At the last hearing, Mr. Shiels testified that the plat will have no significant adverse impacts on salmonids in Boeing Creek including the Puget Sound Chinook Salmon and we feel that Mr. Shiels analysis meets the requirements of this condition.

In addition, I'd like to note that Gary Cooper and I requested a meeting with representatives of the neighbors in an effort to resolve the differences about the plat. And, as a result of this meeting we agreed not to object to the neighbors request for certain additional plat conditions and I will be able to point out which conditions those are after the neighbors make their presentation.

In conclusion, based on the information presented to you we believe the plat as conditioned meets the criteria for plat approval and will have no significant adverse environmental impacts. Accordingly we request that the Planning Commission alter the condition set out in the staff report at page 24 and instead conclude that the plat as currently proposed and conditioned meets the requirements for plat approval and we also request that the Planning Commission recommend approval of the plat as currently proposed and conditioned to the City Council. We further request that the Hearing Examiner find that the plat as conditioned will have no significant environmental

What we've done, is we've taken the hundred year storm, we've put in the DOE for stream bank erosion protection for Boeing Creek, we've added 30 percent of the hundred year storm and added it on to the pipe, so we technically have 130 percent of a hundred year storm. That would be for an excess of, why we would have to, we have some people who would like this done, so, we have two pipes in here ...

Chair Kuhn: I'm sorry, might I interrupt for one second?

Mr. Cooper: Yes.

Chair Kuhn: As an advisory, you've used about 20 minutes of your time ...

Mr. Cooper: Umm hmm.

Chair Kuhn: ... okay. And secondly, my question is: Have all of these revisions been submitted to the City?

Mr. Cooper: No. We just got the Staff report.

Chair Kuhn: Okay.

Mr. Cooper: But you, but you also have to understand, we talked about final engineering, everything we've submitted is preliminary. They're, they're putting in here one to 15 for us to revise our engineering plans.

Chair Kuhn: Okay, sure.

Ms. Kaylor: Also, Commissioner, I'd like to clarify that these ...

Chair Kuhn: Identity yourself so we know ...

Ms. Kaylor: Oh I'm sorry, Courtney Kaylor, I'm here for the applicant. This is not a revised application. These are proposed mitigation measures ...

Chair Kuhn: Okay.

Ms. Kaylor: ...that we are presenting for the Planning Commission and the Hearing Examiner to adopt if they feel they're necessary and that they address concerns related to the plat approval or impacts under SEPA. And I believe that, that this hearing is our opportunity to present ...

For this reason, local agencies must make plat decisions based on the applicable code requirements. Therefore, the city may not legally reduce the number of lots in the project below the 13 currently proposed by the applicant. Similarly, alleged inconsistencies with community character due to the size of lots does not justify a reduction in the number of lots under SEPA. The record shows that the plat will be developed as single family detached homes consistent with the character of the community. In addition, as mitigated the plat will have no significant adverse environmental impacts. Therefore, there is no factual basis on which to reduce density under SEPA. In addition, conditions under SEPA must be based on policies incorporated into regulations, plans or codes that are formally designated by the agency as possible bases for the exercise of the SEPA authority as RCW 43.21C.060 and WAC 197.11.650s1. In this case the relevant code allows the proposed density. Therefore, SEPA does not allow a condition that requires a reduced density.

The applicant has no objection to most of the conditions recommended by staff and in fact has incorporated nearly all of them into the illustrative map that has been marked Exhibit 3C and into its presentation tonight and at the last hearing. Based on the information presented to you, however, we request modification of six recommended conditions as follows. First condition 2[SIC] in the July 18th...[SIC]

Ms. Bendor: Excuse me. Is that in writing as well? Counselor, this is Ms. Bendor speaking.

Courtney Kaylor: No, this is not in writing.

Ms. Bendor: Could you then please go slower.

Courtney Kaylor: Certainly.

Ms. Bendor: Thank you.

Courtney Kaylor: Condition 2 [SIC] in the July 18th [SIC] MDNS requires a soils report regarding the area that has previously been filled and we request that this be clarified to require that the report must be submitted prior to building permit applications or concurrent with building permit applications. And we request this because this condition is carried over from the King County MDNS that was previously issued on the fill and this previous MDNS is one of the

Chairman Kuhn: I guess what my question is when I read the staff report, the predicate there is that the applicant has failed to demonstrate that the proposal submitted with 14 lots is consistent with the character of the neighborhood and staff recommended that the number of lots be 12. The applicant has come back with 13 lots. And, I still haven't heard how the 13 lots comports with the staff recommendation that there be no more than 12 lots, in their opinion in terms of complying with fitting in with the character of the community.

Courtney Kaylor: And I guess our response to that is that we respectively disagree with staff on that point. For the reasons that are contained in my memorandum and for the reasons I mentioned today, we feel that reduction to 12 lots would be illegal and I don't think there is any evidence in the record that reducing this plat to 12 lots would make any difference whatsoever in terms of the character of the plat and where it is compatibility of the neighborhood or environmental impacts of the plat may or may not have. What we are talking about here is an insignificant difference in the number of square feet per lot. And really, I think, fundamentally what this community character issue has centered around in the proceedings so far has been lot size. And again, that is governed by the zoning code. We are vested to a zoning code that allows 5000 sq. ft. lots. And, I understand that the neighbors don't like that code. I understand also that a number of the city officials don't like that code and that's the reason they have adopted an emergency ordinance.

Chairman Kuhn: That emergency ordinance is not at issue here this evening.

Courtney Kaylor: No, it's not an issue here this evening, but the code that does apply to the plat is at issue and when you are talking about community character and relating it directly to lot size which is what the staff report does and what has been done in the proceedings leading up to this hearing, you need to look at the zoning code, you need to look at what is permitted by the zoning code and I think the applicant has really gone of its way to try and address all the issues that have been raised by the neighbors. Again, traffic safety, we've consolidated the driveways, we've provided a turnaround location within the driveways to address the safety of students. We've provided a park. We've provided a children's playarea. We've provided more landscaping trees for screening than are required by the zoning code. I think we have made significant efforts to

address concerns that are related to how this plat will look and how it will fit in with the community. What we have not done is which is increase the lot size as much as the neighbors have requested and we have not done that because we are not required to do that by the zoning code. And a requirement that we do that would be illegal.

Chairman Kuhn: So, in your opinion, the whole crux of it is lot size and none of the other impacts attenuate with the density?

Courtney Kaylor: I think that there are a number of impacts that could relate to density but I believe that the applicant has submitted information and there is information contained in the staff report that demonstrates that all of those impacts have been either are less than significant or have been mitigated to a level that's less than significant. I'll take for example traffic. Traffic is an impact that is definitely directly related to density, more houses, more cars but in this case we have submitted a traffic study that shows that traffic impacts resulting from the plat will be less than significant. And, that really in my mind is the best example because it is the impact that is most directly related to density. I frankly just, I do not believe that it's defensible to say that a significant impact arises simply because looking at this plat you'll see 13 lots instead of 12. I don't think there is any evidence in the record that supports that. I understand that the neighbors disagree with me but in light of what the zoning code requires, I, I, I. As I've said before, I think there are a number of features in this plat that address issues that are not purely square footage issues. I think we have made every effort to address that. The only one that is left is a pure square foot issue and that is governed by the zoning code.

We did discuss at our meeting with the neighbors a number of non-density related features they would like to see after their presentation they may, in their presentation they may request that we include some of those conditions in the plat and as I said I don't object to that. Some of those conditions have to do with the size of trees to be planted with our restriction that the houses be limited two stories above ground level. And then frankly I'm forgetting the rest of them, but we think particularly the limitation on house height for one think is very consistent with the neighborhood and I think I'm repeating myself at this point.

lot area itself? Or can it be in part of the lot area? And my other question is she quoted a number of case law things and I'd like to have the city attorney advise us as to their relevance to the case and if they have any merit.

Chairman Kuhn: I'm not going to ask you to say whether or not they have any merit. What I'm going to ask you to do is take the cases cited by both the applicant and the neighborhood and give us an analysis of those cases and just let us know so that we have, you know, we aren't doing independent legal research in 16 different directions coming up with 16 different

A Commissioner: Especially those of us who are not lawyers.

Ms. Bendor: Is that going to be in writing Mr. Chairman?

Chairman Kuhn: Yes, I'm asking for Mr. Disend to give us an analysis.

A Commissioner: Legal assistance as to the relevance of each of the sites.

Chairman Kuhn: Not to the relevance. Just..

A Commissioner: How about Mr. Gabbert's first question?

A **Commissioner:** Are you digging for the answer?

Mr. Stewart: Could you.. I heard it the first time but I just want to make sure I understand what you are after.

A Commissioner: The question is whether or not the required recreation space can be complied with by counting the actual area within the open area within the provided lots?

A Commissioner: You're asking for a definition of recreation space?

James Holland: Thank you very much, James Holland Senior Planner for the record. This issue actually came up on appeal before the Hearing Examiner earlier this year. And the information that the staff presented to the Hearing Examiner was this. Is recreational, stands for recreational