space provision in the zoning code were adopted at the time that the minimum lot size in the R6 residential zone was two and a half thousand sq. ft. Subsequently this lot size, you are well aware, was raised to 5000 sq. ft. the size and effect under the provisions of City amendments and now we are at 7200 anyway. What staff argued was that noted that the intent of the regulation on provision of recreational space were focused quite clearly on lot size of 2500 sq. ft. The King County Council and subsequently the City of Shoreline having made a determination that with a 2500 sq. ft. lot size being permitted in a R6 residential zone additional recreational space could would be necessary. How were circumstances changed? The lot size was doubled. Staff made the argument to the Hearing Examiner given this change in lot size, if it could be and based upon review of the language of the code if the lot size was such and ratio was such that this recreational space standard of I believe is 340 sq. ft per unit that is cited in the code could be provided in each individual lot. The only requirement that stood for this plat was for the provision of a children's play area. The Hearing Examiner accepted that argument.

Mr. Stewart: One other thing. The that was a condition placed on the first plat. It is referenced on page 147 of attachment F number 1 and that references the condition on the original plat to provide children's play area no less than 20 X 20 as a condition of approval of that preliminary plat.

A Commissioner: Can the Planning Commission take the other perspective on that as is written? Tim, James said that the Hearing's officer accepted the staff's argument. Can we take the opposite position?

A Commissioner: I don't know I haven't heard staff's argument.

A Commissioner: He just gave it to us.

if a plat as submitted does not comply with the zoning code then the city can condition a plat so that it does comply and this is what is occurring here.

Moving on, members of the public at the last hearing claimed that a number of cases established principles under which the city can reduce the density of the project below 13 lots. None of these cases support that proposition. I've addressed each of the cases individually in my memorandum and, in brief, what they stand for is that a city can impose conditions that relate to impacts that are caused by a plat either under a _____code or SEPA. These are very general legal principles and we have no quarrel with them other than the fact that they don't permit a reduction in density below 13 for this plat and that is because, for the reasons that we discussed previously at this hearing, the plat complies with all the applicable code requirements and has no significant adverse impact conditions that would require additional conditions, specifically reducing the density of the plat under SEPA. The Hearing Examiner is giving me a little...

Ms. Bendor: The reason I'm going to look again at the City Attorney – I thought that even though the MDNS was issued for 14, you subsequently conditioned it – it was subsequently proposed for conditioning at 12. That's still not the number I look at?

Mr. City Attorney,

Mr. Stewart?

Mr Stewart is . . .

Mr. Stewart

Disend: If I could refer to Attachment E in your packet – that is the MDNS of record – it was issued July 13, 1998 and it was based on the initial application of 14 units –

yes.

upon

Ms. Bendor:: So I don't take into account the condition that occurred subsequently?

Mr. ~~Disend~~ Stewart: Conditions that occurred subsequently were in regard to the plat.

Ms. Bendor: I know – this is a bifurcated process -- this is unique –

Mr. ~~Disend~~ Stewart: .. and the original MDNS which was issued was not revised or adjusted by staff. It was continued into this hearing and so the new information related to everything that has been presented should be considered by you.

Ms. Bendor: Oh, it should be?
Mr. Stewart: Should be... yeah, we're de novo.

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.

Ms. Bendor: These kinds of fine tune distinctions I find ~~are~~ difficult because I seem to have somewhat of a moving target as to whether – I mean, there were a whole ~~set~~ series of conditions proposed by the citizens and I have to know before I leave the room tonight if we close the hearing what I am supposed to consider. It is extremely important to me. And the fact that you do not object – that's a nice legal nuance but I need to know what I have to consider - …I want to hear from the City Attorney first.

….several people talking …

Ms. Bendor: - …I am going to repeat and ask you – all those proposals by the citizens – if

you do not object to them and the staff does not object to them, do I then take them into account? – to the extent they are relevant to ~~me~~ my issues.

Chair Kuhn: I don't know – I've heard we had an original application for 14; we have 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 –

Ms. Bendor: – 13

Chair Kuhn: Yes, but that has been talked, it hasn't been concrete/

Chair Kuhn: No. Ms. Bendor: OK.

Ms. Bendor– Yes but it's not a formal application. Now the question is what number am I supposed to consider.

Mr. DiSend
~~A Man~~: The application before you is 14.

Ms. Bendor: but it doesn't have a bio-swale, does it? And I thought the bio-swale now was integral to the applicant's current proposal

address that. Just to step back for a minute and
Ms. Kaylor. If I might >> talk about the plat process. An application is submitted; it contains information as required by city code; a zoning code review occurs, various technical reviews occur by the city and during that time ~~various~~ conditions are imposed on the plat and what the plat looks like once those conditions are incorporated into it might be slightly different than what was proposed. In this case we originally proposed a 14 lot plat; we did not propose to include a bio-swale. City staff, in their review of our stormwater expert's report suggested that a bio-swale should be included – and we're not objecting to that condition.

Ms. Bendor: And the reason that's critical to me is that I have to consider ~~whether~~ what are the water quality and quantity ~~that tracks~~ effects downstream ~~is critical to~~ in terms of the salmon – so if I consider 14 I don't have a bio-swale and it seems to me that would be an academic exercise that is not grounded in the real world.

Ms. Kaylor: And – in the MDNS process under SEPA what you would consider is whether the plat with conditions causes ~~considerable~~ significant adverse impact.

Ms. Bendor: that's my understanding. So the conditions even if suggested later than the original MDNS is what I consider? Yes?

Mr. Disend: Yes.

Ms. Bendor: with the conditions. Thank you

Tim Stewart: One question before we proceed

Chair Kuhn – Mr. Cooper in his testimony and presentation ~~make~~ made reference to a number of potential or no objection changes to the original application. Have we reduced those to writing anywhere? Is there a quick reference to us without have to go back over and reap them out of the entire record.

Ms. Kaylor: They are reduced to writing in three locations: the first one is the MDNS that was originally issued for the project and is attached to the staff report; the second one is at the end of your staff report for this hearing and the third one is the memorandum that I submitted to you – I'm sorry, there are four places – the third one is the two page document that the neighbors submitted at the last hearing and the fourth one is the memorandum that I submitted yesterday which outlines the applicant's requested changes to the MDNS, the conditions proposed by staff and the applicant's either statement of objection or no objection to conditions proposed by the neighbors.

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CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Zevenbergen Subdivision 13 Lot Preliminary Long Plat: Adoption of the Planning Commission Recommendation for Approval
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Director, Planning and Development Services

EXECUTIVE/COUNCIL SUMMARY

The decision before your Council is preliminary approval of the Zevenbergen long subdivision proposed by John and Nancy Zevenbergen for 640 NW 180th Street. If approved, the proposed subdivision would create 13 single family residential building lots and a recreational space of approximately six thousand (6,000) square foot in size. The existing home and garage would be retained as Lot 10 of the proposal and 12 new residences would be constructed on the remaining lots. (A conceptual plan of the subdivision is shown as Attachment H, as recommended by the Planning Commission).

The application to formally subdivide this property was first submitted to the Planning and Development Services Department on March 2, 1998. The application was determined to be complete in mid July 1998, and was vested under the 5,000 square foot minimum lot size standards then in effect for the R-6 residential zone. The proposal was first reviewed by the Planning Commission in September and November of 1998 and appealed to the Hearing Examiner (together with its SEPA threshold determination issued on July 13, 1998) by a group of 25 neighborhood residents on December 23, 1998. The Hearing Examiner heard both appeals on February 10, 1999, and returned the application to the City for a new public hearing on both subdivision and SEPA issues on February 24, 1999. In response to this decision, a consolidated public hearing (held by the Planning Commission and Pro-tem Hearing Examiner) was opened on June 3, 1999, and closed on July 22, 1999, following the receipt of testimony from staff, the applicant, concerned neighbors, and other citizens.

Based upon input received through the public review process, the proposed subdivision has been substantially revised since it was first submitted to the Planning and Development Services Department. The number of lots has been reduced from 14 to 13, recreational space and a children's play area have been added, stormwater detention and treatment capacity increased, tree protection and replanting requirements added, additional buffering of adjacent properties

provided, and a condition recommended to control the height and appearance of new homes.

The following report (Attachment A) has been forwarded to your Council by the Planning Commission and includes a record of the review process followed for the Zevenbergen Subdivision, together with findings of fact, conclusions, and conditions developed by the Planning Commission. Changes shown in this report are Planning Commission requested changes to the original staff report prepared on May 25, 1999 (additions are underlined and deletions shown with strikethroughs). By using this format, your Council now has a record of the before and after staff report and issues addressed by the Planning Commission. All exhibits submitted for Planning Commission review during the June 3 to July 22, 1999, public hearing have been placed in the City Clerk's Office for your review.

While the Planning Director is responsible for SEPA review of this proposal, your Council is the final decision making authority for preliminary approval of the proposed subdivision. In this capacity, your Council may wish to add or remove approval conditions in order to ensure that the proposal is in the public interest. However, due to the fact that the public hearing for this application has already occurred before the Planning Commission, your Council's review must be based upon the written record. You may not take new testimony.

Staff recommend that your Council grant Preliminary Approval of the Zevenbergen Subdivision, and also adopt the findings of fact, conclusions and conditions recommended by the Planning Commission. By issuing preliminary approval for this subdivision, your Council will allow the applicant to begin preparation of all the plans and studies required for final review of the proposal. Once these plans and studies have been completed, the application for final subdivision approval will be forwarded to your Council. As the decision making body for final plat approval, your Council will then have the opportunity to determine that all the conditions imposed for preliminary approval of the plat have been met and the proposal fully complies with applicable City development standards.

RECOMMENDATION

Approval of the Preliminary Plat for the Zevenbergen Subdivision, subject to the Findings of Fact, Conclusions and Conditions provided in the Planning Commission Report.

Approved By: City Manager LB City Attorney

ATTACHMENTS

Attachment A	Planning Commission Report and Recommendation to City Council
Attachment B	Planning Commission Minutes, June 3, 1999
Attachment C	Planning Commission Minutes, July 15, 1999
Attachment D	Planning Commission Minutes, July 22, 1999
Attachment E	Planning Commission Minutes, July 29, 1999
Attachment F	Exhibits submitted to Planning Commission (Complete exhibits are available in City Clerk's Office)
Attachment G	Appendices and Exhibits to June 3, 1999 Staff Report (Available in City Clerk's Office)
Attachment H	Exhibit 3C, Plat Map, 06/03/99

Attachment A

Planning Commission Report and Recommendation to the City Council

(Note: Appendices 1 through 6 and Attachments A through T to the original staff report are not included with this City Council Report, but are listed as "Attachment G" and are available for inspection in the City Clerk's Office)

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 ~~11~~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 ~~11~~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 ~~44~~ 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.

~~These 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.

13~~4~~. 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 biofiltration 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~~ safeguard~~s~~ the water quality of Boeing Creek.

14~~5~~. 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.

15~~6~~. 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

Attachment B

Planning Commission Minutes
June 3, 1999

These Minutes Approved
June 17, 1999

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

June 3, 1999
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT
Chair Kuhn
Vice Chair Gabbert
Commissioner McAuliffe
Commissioner Monroe
Commissioner Marx
Commissioner Parker

STAFF PRESENT
Tim Stewart, Shoreline Planning & Development Services Director
Bruce Disend, City Attorney
James Holland, Senior Planner, Planning and Development Services
Sarah Bohlen, Associate Planner, Planning and Development Services
Daniel Bretzke, Project Engineer, Planning and Development Services

ABSENT
Commissioner Bradshaw
Commissioner Vadset
Commissioner Maloney

1. CALL TO ORDER

The regular meeting was called to order at 7:00 p.m. by Chair Kuhn, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Kuhn, Vice Chair Gabbert, and Commissioners McAuliffe, Monroe, Marx and Parker. Commissioners Bradshaw, Vadset and Maloney were excused.

3. APPROVAL OF AGENDA

COMMISSIONER MONROE MOVED TO ACCEPT THE AGENDA AS PRESENTED. COMMISSIONER MARX SECONDED THE MOTION. MOTION CARRIED BY A VOTE OF 6-0.

4. APPROVAL OF MINUTES

VICE CHAIR GABBERT MOVED TO ACCEPT THE MAY 6, 1999 MINUTES AS PRESENTED. COMMISSIONER MONROE SECONDED THE MOTION. MOTION CARRIED BY A VOTE OF 6-0.

5. PUBLIC COMMENT

There was no one in the audience wishing to address the Commission during this portion of the meeting.

6. REPORTS OF COMMISSIONERS

There were no Commissioner comments.

7. STAFF REPORTS

There were no staff reports scheduled on the agenda.

8. PUBLIC HEARING

a. Zevenbergen Subdivision Proposal

Chair Kuhn reminded the Commissioners of the rules regarding the Appearance of Fairness Law. He referred to the fairness checklist that was provided in the Commission's agenda packets. He noted that the law requires that the Commissioners disclose any communications they may have received outside of the hearing regarding the subject of the hearing (either oral or written *ex parte* communications).

Chair Kuhn reminded the participants in the hearing that all testimony presented shall be given under oath or affirmation to tell the truth. The Commission requested that prior to presenting testimony to the Commission or Hearing Examiner, individuals swear or affirm that it is true. He also reminded everyone that the Commission is engaged in the public's business and an appropriate level of decorum should be maintained at all times. All comments should be directed through him, the chair. Only one person will have the floor at any one time. Applauding, booing or disruption of the process will not be tolerated. Chair Kuhn informed those attending that they are holding a conjoined hearing on the SEPA application and the subdivision application as presented to the City of Shoreline.

Tim Stewart, Director of Planning Development and Services, introduced the hearing and said the purpose is to hold concurrent open record hearings on the Zevenbergen application for preliminary plat approval to subdivide the property known as 640 Northwest 180th Street into 14 eventual building lots. He said the Planning Commission first reviewed the application at a public hearing held on September 3, 1998. Following further review, the Planning Commission recommended approval of the application to the City Council on November 5, 1998. This recommendation for approval of the proposed subdivision, together with the threshold determination issued under SEPA, was appealed by a group of neighbors on December 23, 1998. It was forwarded to the City Hearing Examiner for review at that time. The Hearing Examiner held a public hearing for the appeal on February 10, 1999 and issued a report and decision on February 24, 1999. The Hearing Examiner determined that the City had not properly followed its public hearing procedures. Both the staff and the Planning Commission were directed to hold a new public hearing on the proposal to provide interested citizens an opportunity to submit testimony on both the subdivision and the SEPA issues. The City has scheduled this public hearing to comply with the Hearing Examiner's decision. By holding concurrent hearings, interested citizens will be able to submit testimony that is either addressed to the subdivision application, the SEPA issue, or both.

Mr. Stewart advised that all testimony that is submitted at the hearing would be considered by both the Planning Commission and the Hearing Examiner unless it is specifically directed as either a subdivision

or SEPA issue. The Commission, in their review of the preliminary subdivision application, will consider testimony that is submitted to the Planning Commission during the hearing. At the conclusion of their review, the Planning Commission will forward a recommendation on this application to the Shoreline City Council. Testimony submitted to the Hearing Examiner during the public hearing will be considered by the Hearing Examiner in her review of the preliminary SEPA threshold determination issued for this proposal on July 13, 1998. Within 14 days of the closure of the SEPA hearing, the Hearing Examiner will forward a report on the preliminary threshold determination to the SEPA responsible official, advising her on the need for further review or modification of the July 13 mitigated determination of non-significance. The application for subdivision approval will be forwarded to the City Council for their review and decision, and the City will provide full notification of any appeals as required by the City's adopted codes and regulations.

Chair Kuhn introduced Judith Bendor, the City Hearing Examiner for this application. Ms. Bendor inquired if the public hearing on the SEPA issue would be open to any topic or if it is limited to the two issues raised in the previous Hearing Examiner's decision? Mr. Disend answered that the decision of the previous Hearing Examiner, which brought about this new hearing, states that the remand shall be for a complete and full public hearing covering all issues. Therefore, Ms. Bendor's decision would not be limited to the two topics of the previous decision.

Because of the concurrent hearings, Chair Kuhn advised that it is important to understand how the procedure will be structured. He reviewed the proposed agenda for the public hearing which was provided to the Commission prior to the meeting. Subsequent to the creation of the proposed agenda, Chair Kuhn said there was some discussion between City staff and interested parties regarding the reallocation of time to allow representatives of groups up to 20 minutes to present testimony on behalf of their group. As a result of that discussion, the Commission will allow the City, the applicant and representatives of identified groups a 20-minute presentation period. It was suggested that they allow individuals to cede their time to other individuals to talk on their behalf. However, except for the procedures he has outlined to allow representatives of groups to speak for 20 minutes, Chair Kuhn said individuals will not be allowed to cede their time to others. Individual testimony will be limited to three minutes as previously set forth.

Courtney Kaylor, attorney for the applicant, said that there are a number of people who intend to testify for the applicant, including herself and four expert witnesses. She requested that they be allowed at least 40 minutes to make their presentation.

Michael O'Connell, an appellant involved in the appeal, said that at this time there is no identified group in terms of incorporation or association. They have collaborated together, but there is no formal organized group. In the absence of a formal group, and in order to be efficient in their presentation, he asked that both the Commission and the Hearing Examiner reconsider their decision and allow individuals to cede time to other individuals. Hearing Examiner Bendor said she will stand by whatever the Commission Chair determines is appropriate. Chair Kuhn said his concern is that they lose control of the order of the hearing if they start to have people cede their time to others. He said he wants everyone to have the opportunity to speak, even if it takes six months. But, he wants to keep some kind of order.

Mr. Disend said it is totally within the discretion of the Commission to determine the appropriate length of time. He said that the previous Hearing Examiner's findings state that although there are mandates for a timely public hearing process, they must be balanced against the rights of the parties of record to present evidence and testimony at the hearing. It is up to the Commission to determine what is sufficient

time to provide a full and fair opportunity for everyone to be heard. It is appropriate for the Commission to inquire how much time Mr. O'Connell feels his group will need in order to make an appropriate presentation.

Chair Kuhn asked Mr. O'Connell how large of a group he is representing. Mr. O'Connell said the group consists of about 20-25 individuals. He said that he and Cathy Shaffer will be presenting the group's issues, and they had planned to speak for about 20 minutes each. Other people in the group had agreed to cede their time to allow them a greater amount of time. Chair Kuhn inquired how many people, in the group of 20-25 that regularly meet, are present tonight and are willing to give up their time to testify. He asked them to raise their hands. He also asked individuals not part of Mr. O'Connell's group who plan to testify during the hearing, to raise their hand. He inquired if there are any persons who are part of Mr. O'Connell's group who insist that they also be allowed to testify. One individual indicated that he had attended some of the group's meetings, but he would also like to testify as an individual.

Chair Kuhn said the group could have 40 minutes to testify. Individuals would also have the ability to testify for three minutes. He inquired if there are any other persons who represent a group. One individual indicated that she was present to represent Concerned Citizens for Shoreline, but she would need five minutes to speak.

Chair Kuhn asked that all those who intend to testify sign up on the list. He also asked Ms. Kaylor why she did not advise the City of her time needs prior to the hearing. Ms. Kaylor said she was not informed of the proposed time limitations prior to the hearing. If she had known, she would have indicated that she needed more time.

Chair Kuhn opened the public hearing for the Zevenbergen subdivision and inquired if any of the Commissioners had been contacted by anyone concerning the subject of the hearing. No Commissioners indicated any *ex parte* contact. He inquired if there were any persons in the audience who wished to challenge any of the Commissioners. There were no appearance of fairness concerns expressed.

Ms. Bendor opened the public hearing for the SEPA and MDNS consideration. She advised that she is acting in a pro-tem capacity. She was hired by the City for this particular issue. She did have a conversation with Mr. Holland of a procedural nature regarding her contract and this issue. There were two in-person conversations and one telephone conversation. She questioned if there was a stream on site. Mr. Holland's answer was no.

Chair Kuhn requested that those people presenting testimony identify whether their comments are germane to the Planning Commission's subdivision hearing or to the Hearing Examiner's SEPA hearing. Those that are not identified as belonging to one or the other will be open for consideration by both hearing bodies.

James Holland, Senior Planner, Planning and Development Services, said that the testimony he will provide is true and correct to the best of his knowledge. He said the issue before the Commission and the Hearing Examiner is the preliminary approval for the Zevenbergen Subdivision and the mitigated determination of non-significant (MDNS) issued on this application on July 13, 1998. The property is located at 640 Northwest 180th Street in the Richmond Beach [sic] Neighborhood of Shoreline. Mr. Holland said the Commission will hold a hearing and make a recommendation to the Council regarding the proposed subdivision, while the Hearing Examiner will hold a public hearing and make a recommendation to the responsible SEPA official regarding the previous preliminary SEPA threshold determination.

Mr. Holland identified that the property is currently zoned R-6 residential, which allows six units per acre. The size of the property is just under 2½ acres (105,099 square feet). The number of lots being proposed is 14, which is the maximum allowed under the zoning regulations in effect at the time the application was completed. The applicant's are John and Nancy Zevenbergen, and their agent is Gary Cooper.

Mr. Holland provided some photographs of the site. The first was taken from the intersection of Northwest 180th Street and Sixth Avenue North, both of which are arterial streets. It shows the southeast corner of the subject property. He noted the lack of street improvements (sidewalks and pedestrian crossings.) He also noted the existing fence which screens the property and some mature trees along the boundary. The next photo showed the eastern portion of the subject property, which is dominated by a playing field. This area was filled under a permit issued by King County in late 1990. He noted a number of trees along the northern boundary of the property screening the houses to the north. There is also existing vegetation along the eastern boundary. The next picture was taken while looking west from the playfield, and shows the existing house, which will be lot 11 of the proposal. He noted that this photograph is typical of the average density of trees and shrubs on the western half of the property. The final photograph is focused on the western boundary. To the left are trees that provide a screen for the house fronting Northwest 180th Street. Straight ahead there is very limited screening of the existing residential development to the west.

Mr. Holland reviewed the history of the proposal. The application was first submitted in March of 1998. Public notice was issued, together with a SEPA threshold determination, in July of 1998. The Planning Commission held its first open record public hearing regarding the subdivision proposal on September 3, 1998. At a subsequent meeting on November 5, 1998 they forwarded a recommendation for approval of the subdivision proposal with conditions to the City Council. This recommendation for approval and the SEPA threshold determination were appealed by neighbors of the property on December 23, 1998. The appeal hearings were consolidated into a single hearing held by the Hearing Examiner on February 10, 1999. The Hearing Examiner issued his report and recommendation for the appeals on February 24, 1999.

Mr. Holland recalled that the Hearing Examiner found that staff had reasonably considered the potential impacts raised by this proposal, with two exceptions—the impact of the proposal on the character of the community and the potential impact of the proposal on endangered species. In addition to finding these omissions, the Hearing Examiner remanded the proposal back to the City for a new public hearing on both the SEPA and subdivision issues. The Hearing Examiner directed the staff to provide specific written findings to the Commission which would meet state requirements as outlined in the Plats and Subdivisions Act (RCW 58.17). It also directed that the City should allow careful consideration to the density of the proposal and explicitly consider the best interests of the public welfare and neighborhood development (from the State Planning Statute).

Mr. Holland reviewed the process to date. The application for preliminary subdivision approval is the first step in a subdivision review process. Should this application receive preliminary approval, it must go through two additional steps before final plat approval is given. An engineering review is conducted where the City reviews the plans to determine their compliance with code. The Planning Commission's responsibility relating to this proposal is to determine if the proposal: 1) complies with the adopted policies and standards, 2) provides for existing and future needs, and 3) is in the public's best interest. The Planning Commission must forward findings and conclusions and a recommendation on the

proposal to the City Council. The applicant must comply with any approval conditions recommended by the Commission and approved by the Council before final plat approval can be given.

Mr. Holland referred to the summary of the analysis of the proposal which was previously provided to the Commissioners. He noted that the application is essentially identical to the one reviewed by the Planning Commission on September 3 and November 5, 1998. The proposal complies with the numerous zoning standards controlling lot size and has the potential to comply with the adopted road standards. The City Engineer has approved proper variances, and they are documented in the Commission's packet. He also noted that the Fire Department has determined that the proposal has the potential to meet the requirements of the fire code. The proposed stormwater collection and detention system has been modified to address the majority of the City's concerns. He referred to the staff memorandum addressing the storm water analysis (Appendix 1). He said this proposal does not address the issues of community character and endangered species protection that were identified by the Hearing Examiner in his February 24, 1999 report.

Mr. Holland reviewed the staff's conclusions for the proposal as follows:

- The applicant has failed to demonstrate that the proposal, as submitted with 14 lots, is consistent with the character of the neighborhood.
- The applicant has failed to demonstrate that the proposal, as submitted with 14 lots, 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.
- The applicant has failed to demonstrate that the proposal, as submitted with 14 lots, is able to provide for a children's play area as required by the Shoreline Municipal Code.
- 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.
- A reduction in the number of proposed building lots, from 14 to 12, would provide the potential for enhanced compatibility with the neighborhood and additional land for on-site management of storm water quantity and quality and for the provision of a children's play area.

Mr. Holland said that given these five conclusions staff recommends that the Planning Commission make the following findings:

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 in the staff report.

Mr. Holland said the staff recommends that the City Council approve the proposed subdivision with the following conditions:

1. The applicant shall re-design the proposed subdivision to reduce the number of proposed lots from 14 to 12 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.

2. No grading or clearing of the project site shall be allowed until the final subdivision 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 Access Tract A. 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 18.19.190 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 five 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 set of covenants, conditions, and restrictions (CC and R's) that provide for the maintenance and repair of all commonly owned facilities, such as landscaping, street lighting and children's play area, by property owners in the proposed development. These CC and R's 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 Northwest 180th Street so as to accommodate future City of Shoreline Public Works Department drainage Capital Improvement Project.
13. The applicant shall revise the proposed stormwater management system plans by removing the proposed coalescing oil/water separator and providing water quality control for all surfaces subject to vehicular access. Use the Department of Ecology manual, or an equivalent manual, to implement a design that safeguards the water quality of Boeing Creek.
14. The applicant shall provide revised plans that accurately and adequately address the drainage problems of the houses located at 631,617,611 and 605 Northwest 182nd Street.
15. In recognition of the issues 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.

Commissioner Parker inquired why the staff is recommending a reduction from 14 to 12 lots. Mr. Holland answered that 12 lots are the minimum allowed under the present zoning regulations. Commissioner Parker inquired why four vehicle spaces are required per lot. Mr. Holland replied that, often-times, the garage gets used for storage instead of for cars. If there is only a single-car driveway, one or more cars usually end up on the street. Commissioner Parker inquired why staff has identified specific addresses in Condition 14. Mr. Holland answered that there have been a number of complaints

and concerns from these property owners regarding the proposal and the impact to their property. Mr. Holland deferred this question to Mr. Bretzke.

Daniel Bretzke, Project Engineer, Planning and Development Services, affirmed that his testimony would be true. Mr. Bretzke said the addresses identify the lots directly north of the drain field, but one address that should be included was left off (637). The intent is to include all properties to the north that the subject property would drain onto.

Commissioner Monroe noted that the Endangered Species Act not only requires that contamination be removed from water entering creeks and waterways, it also requires that the temperature be considered. He inquired how the City intends to address this issue. Mr. Holland answered that there are two areas of concern regarding stream temperature protection. The first is related to shading and the preservation of trees over the stream. Second, is the temperature rise in the storm water retention. The primary control for the stream temperature would be accomplished by detaining the stormwater in pipes that are buried underground and releasing it at 50 percent of pre-development rate. Given the factor of underground storage, there would be limited potential of the water being artificially warmed to a point that it would negatively impact the salmonids. Commissioner Monroe clarified that in order to remove the contaminants from the stormwater, they plan to allow the matter to settle out while it is stored in the pipes. Mr. Holland said some quality effect could take place through the settlement of water in the pipes. But, the City is requiring a third quality control measure particularly related to motor oil and gasoline through the installation some kind of biofiltration or similar quality improvement device.

Ms. Bendor inquired which of the 15 conditions could also be identified as SEPA conditions. Mr. Holland said the intent of the conditions is to supplement regulatory authority regarding SEPA by controlling timely development as explicitly allowed the City under its development codes. A number of the conditions complement SEPA. Ms. Bendor inquired if there are any conditions that are exclusively unrelated to SEPA. Mr. Holland explained that those that specifically cite zoning are related to the zoning issue. Those that deal with matters of timing, construction and clearing etc. compliment SEPA. Ms. Bendor clarified that her recommendation goes to the SEPA responsible official and appeals go to Superior Court. Whereas, the Planning Commission's recommendation goes before the City Council.

Ms. Bendor referred to Condition 15 and said this suggests that the SEPA responsible official has to make a decision one way or another, and they cannot defer to a later stage (not the public hearing stage) for those determinations. She suggested that Condition 15 is problematic.

Mr. Stewart, Planning and Development Services Director, affirmed that his testimony is true to the best of his knowledge. He clarified that the SEPA determination threshold identified in Attachment E of the agenda packet outlines the mitigation identified and established on the record. He advised that it is appropriate for the Commission to further consider Conditions 2, 13 and 15. Ms. Bendor stated that she feels Condition 15 is inappropriate. Mr. Stewart recalled that the Hearing Examiner's report specifically referred to the question of endangered species. However, because of the absence of additional submittals on endangered species, staff feels it is very important to add a condition related to the issue. Ms. Bendor said she does not doubt its importance, and expressed concerns about whether or it is sufficient as written.

Vice-Chair Gabbert referred to Condition 15, as well. He said his concern is the relationship between the time when salmon were added to the endangered species list and when the application was submitted. Mr. Holland recalled that this issue was brought up at the appeal hearing and was considered

by the Hearing Examiner. While the Hearing Examiner didn't allow the submission of materials relating to Salmonids, he did feel that it was germane that the endangered list be considered. While this application was vested prior to the endangered species list, the issue has been deferred back to the City for consideration. He said he is not certain whether such vesting would have any effect whatsoever on an action taken by the Federal government. Mr. Disend said he inquired whether or not the applicant would be raising any issues regarding vesting, and their answer was no. But this issue will be addressed later in the hearing.

Courtney Kaylor, Attorney for the Applicant, 2025 First Avenue, Suite 1130, Seattle, 98121 affirmed that her testimony would be true to the best of her knowledge and ability. She said the presentation on behalf of the applicant will show that the plat meets the legal standards for approval, and that the plat, as currently designed with the mitigation measures proposed by staff and some minor modifications, would not result in any significant environmental impacts. Therefore, the applicant requests that the Planning Commission recommend approval of the plat and the issuance of a modified MDNS for the project. She said that Gary Cooper, the applicant's representative, would describe the current design of the plat. Dean Hough, the applicant's engineer, would discuss storm water issues. Terry Gibson, the applicant's traffic expert, would discuss traffic issues. John Altmann, the applicant's ecologist, would discuss wetlands and the absence of endangered species on site. Bill Shiels, the applicant's expert on pond species, would discuss the absence of impact to salmonids in Boeing Creek. Finally, she will address the plat's compliance with applicable legal standards and SEPA review.

Gary Cooper, 20351 Greenwood Avenue North, Shoreline, 98133 affirmed that he would tell the truth. He recalled that the project was first presented several months ago.

THE COMMISSION WENT OFF RECORD TO MARK EXHIBITS AT 8:06 P.M. THE HEARING WAS BACK ON RECORD AT 8:12 P.M.

Chair Kuhn prefaced Mr. Cooper's presentation with a request that he identify the exhibits to which he is referring and identify, if germane, whether the exhibit pertains to the subdivision application, the SEPA hearing or both.

Mr. Cooper started with Exhibit 3c, a portion of which relates to both SEPA and the subdivision application. Mr. Cooper said the proposal is for 14 single-family homes on 2.41 acres. They have considered all of the information from the original meeting before the Planning Commission, information from the appeal before the Hearing Examiner and information that has come in from the public and staff. They have addressed all 15 of the conditions. In their opinion, they have resolved over and above what is required. Exhibit 3c references density. Exhibit 1a gives an idea of how they reached the results for density that identifies the minimum density of 12 lots and the maximum density of 14 lots. Under the code, the applicant has met the requirements for 14 lots. Yet, arbitrarily, staff has stated that they have elected to allow only 12 lots without providing an explanation to the applicant. He suggested that the City cannot just arbitrarily pick the minimum. The applicant has the right to the maximum, and that is what they are asking for.

Mr. Cooper said one of the lots in the original plan has been removed and replaced with a 5,900 square foot park which will meet the play area requirements as described in Condition 3. It would be available to all those living around the development, and not just the people who live in the new development. This more than adequately addresses one of the community concerns. They could also provide an additional 20' by 20' parcel in another location to be dedicated as a park if the City desires. Another option would be to put this area into the CCR's for the homeowner's association, and the residents of the

development could maintain it. If the Parks Department decides they want this area as a park, the developer would do all of the improvements. Chair Kuhn noted that the proposed public park would sit on that portion of the plat that was part of the fill area. Mr. Cooper agreed and identified the fill area.

Mr. Cooper described the size of the lots ranging from 5,032 to 6,000 square feet. Most of them are 55 to 60 feet wide. Ms. Bendor inquired if she could request copies of those exhibits that are only intended for the Planning Commission if she determines that they would be helpful to her, as well. Mr. Disend said that would be appropriate. Ms. Bendor asked that she be provided with a copy of Exhibit 3c.

Mr. Cooper said another issue that came out at a previous discussion was related to the possibility of condensing driveways. He described the original proposal for driveways and recalled that the MDNS originally stated that they should consolidate driveways for safety purposes. They have done this, and he described the new driveway proposal.

Mr. Cooper noted that there are curbs, gutters and sidewalks proposed around and through the entire project and down to the Fire Department-approved turn around. They will extend the turn around by five feet as required by one of the conditions. He described the proposed 20-foot access to the development and noted that there will be street trees as required. He said this would address an issue related to the MDNS. The driveways for Lots 10 and 9, 7 and 8, and 5 and 6 will be combined together.

Mr. Cooper said another issue related to the MDNS involves improvements to the intersection. The intersection of Sixth Avenue North and Northwest 180th will be improved significantly in all directions. The northeast and southeast corners will be improved with curbs, gutters and sidewalks approximately 30 feet in each direction. On the other side there will be curbs, gutters and sidewalks extending several hundred feet in each direct. Ms. Bendor inquired if the applicant proposes to extend curbs, gutters and sidewalks along the entire frontages of Northwest 180th and Sixth Avenue North. Mr. Cooper answered affirmatively. Mr. Cooper said that in addition, the developer must improve the road to 36 feet wide while it is now only about 20 feet wide. This would improve the safety at this intersection for the children who walk in the area. Mr. Cooper said the applicant would also provide turn lanes at this intersection to relieve congestion. Chair Kuhn questioned the need for turn lanes, when this section has a four-way stop. Mr. Cooper said the turn lanes would address the safety issues related to morning and evening traffic. Mr. Cooper said that because the street is going to be widened significantly, there will be room to provide whatever traffic measures the City determines are necessary. Exhibit 3c shows the total improvements that will be done at this intersection.

In reference to trees, Mr. Cooper said the eastern portion of the subject property has no significant trees. The west side of the property has several pockets of trees across the north end of the property. There is a pocket around Mr. Zevenbergen's residence and a pocket near lots 8 and 9. Mr. Cooper stated Applicant's proposal would include a tree preservation plan included in the final engineering plan. They also stated that all trees that are inside of the building pad of each of the lots, roadways or driveways would be eliminated. Any trees that are outside of the setbacks of the house or the driveways would remain. If the developer wants to remove any tree outside of the building pad, an arborist's review would be required to verify that the tree would die or be a danger after construction. Ms. Bendor asked if Mr. Cooper disagrees with the City's condition related to trees. Mr. Stewart advised that this condition is outlined in the original SEPA determination (page 142 of the packet under 3a).

Mr. Cooper referred to the wetlands issue and noted that on Page 77 of the packet there is a letter from the Army Corps of Engineers which states that they cannot conclusively prove that wetlands were filled on the subject property. It also states that the property does not meet the criteria for wetlands.

In checking with the assistant principal at Sunset Elementary School, Mr. Cooper said he learned that six years ago the number of students at the school was 500 and today it is 450. This indicates that there is sufficient school capacity to accommodate the development.

Mr. Cooper referred to Exhibit 1c, which applies to both the SEPA and subdivision issue and illustrates the changes in the proposed stormwater drainage system. He said they originally designed the project for a 100-year storm, which is adequate. They also added the Department of Ecology standards for stream bank erosion, which requires a larger pipe over and above what is required for a 100-year storm. This adds an additional 30 percent to what is required for a 100-year storm.

Chair Kuhn inquired if all of the stormwater revisions have been submitted to the City. Mr. Cooper said that they have not, but he reminded the Commission that the engineering plans are preliminary at this point. Ms. Kaylor clarified that the applicant is not presenting a revised application. This is the applicant's opportunity to present proposed mitigation measures for the Planning Commission and the Hearing Examiner to adopt if they feel they are necessary and if they address the concerns related to the plat approval or impacts under SEPA. Chair Kuhn suggested that the Commissioners and the Hearing Examiner may find it difficult to register all of the information that is provided without having the documents in their hands.

Mr. Cooper concluded that the proposed plan provides more than adequate drainage, and the applicant has met all of the codes and regulations on the first submittal. They have met the requirements for a 100-year storm, eliminated the oil separator and put in a swale. In the proposal, two pipes (200-feet long and 5-feet wide) would run along the private road, providing 400 feet of 5-foot pipe to drain the plat. The proposed drainage system would allow a 30-percent contingency above the requirements for the 100-year storm. The pipes would carry the water into a 180-foot long bio-swale. He noted that the bio-swale technically needs to be 200 feet long, and this modification could be made if the City deems it necessary.

Mr. Cooper said that the property owners of five to six houses to the north of the project (listed in Condition 14) have indicated that they may have drainage problems if the property is developed as proposed. If the City Engineer deems it necessary, the developer could place small yard drains in the backyards of these properties and pipe the stormwater into the main system. However, they would like confirmation that this is an actual issue.

Dean Hough, 8918 11th Street Northeast, Everett, said he is the engineer that did the preliminary design for the Zevenbergen plat. He swore that his testimony would be the truth to the best of his knowledge and ability. Mr. Hough said he did the calculations to determine the 100, 10 and 2-year storm as well as 50 percent of the 2-year storm. Ms. Bendor inquired how the applicant could provide less protection for a 2-year storm than for a 100-year storm. It seems that they are providing for only 50 percent of the predevelopment protection for the 2-year storm. Mr. Hough explained that the proposed plan would detain water not only for the 100, 10 and 2-year storms, it would also provide flood control protection for the downstream residents by providing a detention system that is over and above the DOE requirements. They would be letting off less runoff from the site than what is currently taking place. Chair Kuhn clarified that the proposed drainage system would manage more runoff. Therefore, there would be less off-site runoff after development. Mr. Hough concurred that the release rate would be slower than what currently exists.

Commissioner Monroe inquired what year FEMA actually designed the 100-year flood maps. He said he thought it was 1987, and he suspects that there has been development since that time that has caused larger impervious areas. Mr. Hough agreed, and said FEMA has created additional requirements and new design methods to increase the storage volumes. For this proposal, they are using the requirements that were given two years ago.

Mr. Hough said that in addition to the drainage pipe design, he also did the analysis of the on-site pipes. He found that even a 100-year storm would not overflow any of the catch basins. He concluded that he found no significant on-site drainage impacts associated with the proposed design. Mr. Hough said that in the redesign process, the City has requested a bio-swale rather than an oil separator system. That change would not be a problem.

Mr. Hough said he visited the site and reviewed the design plans that were done by King County and the City of Shoreline. He found no erosion or sedimentation that would prevent water from going to the north pond and to Boeing Creek. Also, he noted that he has reviewed the report on the sinkhole reconstruction, and it seems to be adequate to handle future flooding situations. He has found no significant downstream impacts from the downstream storm drainage. Since they will be detaining up to 50 percent of a two-year storm, they will be backing up more water from the subject property than what would occur in the existing conditions. He clarified, once again, that the post development outflow would be less than 50 percent of the existing flow.

Ms. Bendor recalled that Mr. Hough stated that no erosion or sedimentation exists that would prevent water from reaching Boeing Creek or the North pond. She said the converse of that statement is that the proposed release rates would not cause sedimentation or erosion. Mr. Hough said that is correct. The release rate from on-site would not cause erosion, and he found that there would be no siltation downstream from the site that would prevent the flow of water. There would be no recurring flooding problems on Third Place West, Sixth Avenue North or 175th Street. He said the bio-swale would also help the situation by infiltrating some of the water created by the increase in impervious surface.

Commissioner Monroe inquired what type of maintenance the developer would provide for the bio-swale. Mr. Hough said this has not been determined because they have not completed the design work. But, normally, the homeowners or whoever is responsible for the area would have to do periodic maintenance. Mr. Cooper added that the storm system, itself, would be located on a public road and be dedicated to the City. They have not discussed whether or not the bio-swale would be dedicated to the City, as well. If it is not, then the CCR's of the homeowner's association would provide for this maintenance. Commissioner Monroe advised that bio-swales do not get rid of contamination. They hold it there, and the contamination actually goes into the grass or plant material. The only way to get rid of the contamination is to cut the grass, remove it and burn it. Mr. Cooper said the maintenance decision could be made as part of this review process. Commissioner Monroe inquired if the bio-swale were dedicated to the City, would the City be willing to take on the maintenance responsibility. Mr. Stewart said if the City owns the bio-swale, they would be obligated to maintain it.

Terry Gibson, Gibson Traffic Consultants, affirmed that what he testifies is the truth to the best of his knowledge and ability. Mr. Gibson said he is a professional civil engineer in the State of Washington, and he specializes in traffic and safety. Mr. Gibson referred to Exhibit 3c, which is the site plan proposal. He said he completed a site visit in late April to complete his fieldwork. He also did a traffic count at the intersection of Sixth Avenue North and 180th Street to provide information regarding peak and daily traffic, etc. He said that at this time, Northwest 180th, which is west of Sixth Avenue North, carries about 2,500 trips per day. To put that into perspective, Mr. Gibson said that a two-lane road like

Northwest 180th, with a student walkway on the south side, can carry about 8,000 trips per day. At this time, the street is at about 30 percent capacity. There was a significant left turn from north to west, and they counted 172 during the peak hours. This is a fairly significant left turn volume, and there is also a significant eastbound right turn volume of about 56 cars or 76 percent of the traffic eastbound during the p.m. peak. It is even higher during the morning peak. It is their recommendation that a right turn lane be provided at that intersection turning south and that the inside lane be designated as a through lane.

Mr. Gibson said that the original plan provided individual lot access to Lots 4, 5, 6, 7, 8 and 9. His main concern is safety on this project and backing out traffic from a lot of driveways is not good. They have gone from a total of eight access points, either along Sixth Avenue North or Northwest 180th down to Tract A (the main feeder road) with a turn around. There will be a combination joint driveway for Lots 5 and 6, Lots 7 and 8, and for the existing home and Lot 9. This lowers the access points to four—two on each street.

Mr. Gibson said that Sixth Avenue North carries only about 680 average daily trips (about 8 percent of capacity). Of the 13 lots, nine would feed onto Sixth Avenue North, which is appropriate, since there is less traffic on that street. Sixth Avenue North is also 12-feet wide compared to Northwest 180th, which is only 10-feet wide.

Mr. Gibson said that he has worked for 15 school districts regarding traffic safety issues. At this time, there is a six to eight-foot asphalt walkway that extends down to dead-end into the walkway at the back of the school. The walkway situation is fine, with the exception of the steep grade on Sixth Avenue North to the south. The additional 100 feet of sidewalk improvement at the intersection and the ADA acceptable ramps will provide a safer crossing. He said Northwest 180th will be widened to a 36-foot road as required by Shoreline standards. Sixth Avenue North will have eight feet of paved shoulder on the west side. Where traffic comes out of the main access (Tract A) there are some trees, but because of the increase in the shoulder width of the road, site visibility would be good in all locations. They will also provide new street lighting at the intersection as well as along Tracts A and B.

Mr. Gibson said the traffic report, dated May 12, 1999, is Appendix 3 to the latest staff report. In terms of traffic, the 13-lot proposal would add 115 daily trips and 12 p.m. peak trips through the street system. This would result in a 15-percent increase to Sixth Avenue North and a 1-percent increase to Northwest 180th. Traffic impacts will be minimal. With the improvements, which more than mitigate the SEPA impacts from a traffic safety standpoint, traffic conditions would be better after the development than they are today.

Commissioner McAuliffe inquired how wide the curb cuts are for the joint driveways. He inquired if this would impact the ability to provide four on-site parking spaces as recommended by the staff. Mr. Cooper said that the curb cuts would be 20 feet. There would be two parking stalls in the garage and two out front in the driveway, which would meet the four-space requirement.

Vice-Chair Gabbert referred to the comment that four access points is better than eight, and pointed out that there would still be the same quantity of cars backing out onto the street. Chair Kuhn noted that there would no longer be the potential for eight cars to back out at the same time. Vice-Chair Gabbert inquired if there could be internal turn arounds so that the cars could be facing forward when they come out of their driveway. Mr. Cooper said it is possible, and he used the site plan to describe how this could occur.

Commissioner Marx verified that the traffic count was not done during school hours. Mr. Gibson said that, typically, traffic counts are done between the hours of 4:00 and 6:00 p.m. and elementary schools usually get out at about 3:00 or 3:30 p.m. The worst traffic in the afternoon is during the commuter peak from 4:00 to 6:00 p.m.

Chair Kuhn said that is clear that the hearing will not be concluded in one evening and would have to be continued to a date certain to allow public testimony. He said the Commission would also accept written testimony.

Ms. Kaylor said that if it were possible to go later into the night, the applicant would appreciate it. She noted that the attorney for the applicant is not available on June 17, 1999. Chair Kuhn said that it is not possible to extend the meeting significantly. The Commission may have to consider a date later than June 17, 1999.

Mr. Cooper noted that three Commissioners were missing. If they read the transcript from this meeting, would they be allowed to participate in a decision? Chair Kuhn said that in the past, they have allowed Commissioners to read the transcript and bring themselves up to date. He deferred to the City Attorney for direction.

John Altmann, Talasaea Consultants, 15020 Bear Creek Road Northeast, Woodinville, affirmed that his testimony would be true to the best of his ability and knowledge. He said he has 10-years experience in wetlands and wildlife study, mostly done in the Northwest. He conducted a wetlands study on the site on March 31, 1999 using the 1997 Washington State Wetlands Identification Delineation Manual. The site consists of a single-family residence plus a mixture of native vegetation and lawn and ornamental plantings. Most of the native vegetation on the site is typical of upland habitats (Douglas Fir, Maple, etc.) No soil on the site was found to be hydric, and there were no areas of pond or soil saturation. Mr. Altmann said his conclusion is that there are no wetlands on the property, which reaffirms a 1989 study of the site. Mr. Altmann said he also assessed the site for the on-site presence of threatened and endangered species. He found it highly unlikely that any threatened or endangered species would be located on the property.

Bill Shiels, Talasaea Consultants, affirmed that the testimony he provides would be truthful and complete according to the best of his knowledge and ability. Mr. Shiels said that he has been doing wetlands, fisheries, water quality and stream work for about 25 years. He said he is familiar with Boeing Creek because he was hired five years ago by the Seattle Golf Club to evaluate environmental concerns regarding their irrigation system and dam and pond system going into Boeing Creek. As part of that project, he had the opportunity to review the stream conditions through every season of the year. He said he has visited the project site, the retention pond area and the discharge area into Boeing Creek from the stormwater system. He said there is some ambiguity with respect to the testimony that has been presented both verbally and written regarding endangered species and salmonids. He suggested that these terms should not be used synonymously. There are many salmonids that are not endangered. Nevertheless, they are concerned about any aquatic life, and most City, State and Federal agencies are cognizant of the importance of salmonids. Therefore, every impact that would have an effect on the species or their habitats is addressed in the design.

Mr. Shiels said the flow in Boeing Creek is not ideal for Chinook Salmon. They come into the fresh water system to spawn in September, which coincides with the lowest stream flows. Chinook Salmon are typically large stream spawners. The potential for Chinook may exists, although he is not aware that Chinook is a species that births in Boeing Creek. Chum Salmon spawning, through some enhancement programs, has occurred. Salmonids are a concern in every project that they do. If they do their job right,

then the Chinook Salmon would be protected as a result. He said he is convinced that the stormwater release rates will be acceptable and will not create any measurable adverse negative impact to aquatic life in Boeing Creek.

Mr. Shiels referred to water quality (both temperature and sedimentation). As part of the project, they consider two aspects related to water quality. The first is construction, and how the upland is developed is very important. Post development has been addressed by the catch basins and detention vaults which will trap sediments. The bio-swales will provide an additional measure of water quality protection.

Ms. Bendor inquired if the detention vaults are the oversized pipes. Mr. Shiels answered affirmatively. Ms. Bendor inquired if these pipes have some ability to stop sediments. Mr. Shiels replied that because of the dead storage space in the pipes, sedimentation is allowed to occur. Mr. Shiels agreed that for construction, water quality is an important issue. But, he said he is certain that the City would require the applicant to provide a temporary rain control sedimentation plan that would have to demonstrate best management practices.

Because of the stormwater design and the anticipation that the City would require a temporary erosion and sedimentation plan, Mr. Shiels did not feel that the project, if designed and built correctly, would have any adverse impacts on salmonid resources in the creek. Chair Kuhn clarified that Mr. Shiels is referring to wild Chinook and not hatchery raised Chinook.

Commissioner Monroe inquired how the applicant proposes to remove nutrients from the runoff. Mr. Shiels said this stream discharges into Puget Sound, which has a fairly good capacity to handle excess nutrients. The concern in the stream, however, is valid. Most of the phosphorous (the main nutrient which causes nutrification of ponds, lakes and streams), is complex with sediment particles. If they remove the sediment particles, they will be removing the phosphorous.
Ms. Bendor said there seems to be some question as to how the bio-swale will be maintained. She inquired if Mr. Shiels has any opinion. Mr. Shiels it is his belief that small scale bio-swales, which is the case with this particular project, should be maintained by mowing the grass to about four inches. The clippings should be removed to an area that does not drain into the stormwater system because of the nutrients contained in the grass.

Vice-Chair Gabbert inquired how the bio-swale system relates to the use of a compost filtration system. Mr. Shiels said there are mixed feelings about the compost filtration system because it uses a substance that is not uniform and consistent, and it does not remove the phosphorous. It is also difficult to keep the compost beds permeable. He said he is not in favor of this option.

COMMISSIONER PARKER MOVED TO CONTINUE THE PUBLIC HEARING FOR FIVE MINUTES. COMMISSIONER MARX SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

Chair Kuhn explained that if the public hearing is not continued to June 17, 1999, the Commission's next regularly schedule meeting is not until July 15, 1999. He inquired if there is any opportunity for the applicant's attorney to have someone from her firm represent the applicant on June 17, 1999. Ms. Kaylor said that will not be possible. Chair Kuhn clarified that the Ms. Kaylor is asking that the meeting not be continued to June 17, 1999. He inquired if the applicant would be willing to waive any objection to the hearing being continued to a date later than June 17, 1999. Ms. Kaylor inquired if there is a possibility that it could be scheduled for a date earlier than July. Chair Kuhn said the regularly scheduled meetings are July 15 and 22, 1999. Mr. Stewart advised that the meeting room has been

reserved for July 15, 22 and 29, 1999. However, these meeting were tentatively scheduled to cover the new Shoreline Development Code. He said there is a great workload concerning the Development Code coming before the Commission in July, which is City Council's top priority for 1999. He said they could make adjustments in the agenda if the Commission desires. He said the Commission Clerk would have to check for room availability before a meeting could be scheduled for another night. The Commission Clerk noted that the building would not be available the first week in July.

Catherine Shaffer, a representative of the neighborhood group, indicated that she would not be available from June 24 to July 2, 1999. She asked that her schedule be given consideration, as well.

COMMISSIONER PARKER MOVED TO CONTINUE THE MEETING FOR FIVE MORE MINUTES. VICE-CHAIR GABBERT SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

COMMISSIONER PARKER MOVED TO CONTINUE THE ZEVENBERGEN PUBLIC HEARING TO JULY 15, 1999 AT 7:00 P.M. IN THE SHORELINE CONFERENCE CENTER BOARD ROOM. COMMISSIONER MONROE SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

Chair Kuhn announced that the public hearing on the Zevenbergen subdivision and the SEPA determination was be continued to July 15, 1999 at 7:00 p.m. in the Shoreline Conference Center Board Room. He cautioned the Commission and the public that there should be no discussion amongst the Commissioners nor by the public with the Commissioners, applicant or staff on matters or issues that are pending before the Commission in the continued hearing until all of the evidence is in. Deliberations by the Commission will be held in public at a regularly convened or continued meeting.

9. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

10. NEW BUSINESS

There was no new business to discuss.

11. AGENDA FOR NEXT MEETING

Mr. Stewart said that given the fact that the Commission has continued the public hearing to July 15, 1999, he suggested that the June 17, 1999 meeting be used as a workshop on the code. Another option would be to cancel the regularly scheduled meeting so that the Commissioners could attend the Planning Academy Meeting scheduled for that same night.

Mr. Stewart said the staff report for the formal Shoreline Development Code proposal is not scheduled for completion until July 8, 1999. However, staff could discuss some of the conceptual issues that will be coming forward as a result of the first phase of the Planning Academy.

12. ADJOURNMENT

The meeting was adjourned at 9:41 p.m.

Dan Kuhn
Chair, Planning Commission

Suzanne M. Kurnik
Clerk, Planning Commission

Attachment C

Planning Commission Minutes
July 15, 1999

These Minutes Approved
July 29, 1999

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF SPECIAL MEETING

July 15, 1999
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT
Chair Kuhn
Vice Chair Gabbert
Commissioner McAuliffe
Commissioner Monroe
Commissioner Marx
Commissioner Parker
Commissioner Vadset
Commissioner Bradshaw

STAFF PRESENT
Tim Stewart, Shoreline Planning & Development Services Director
Bruce Disend, City Attorney
James Holland, Senior Planner, Planning and Development Services
Sarah Bohlen, Associate Planner, Planning and Development Services
Daniel Bretzke, Project Engineer, Planning and Development Services

ABSENT
Commissioner Maloney

1. CALL TO ORDER

The special meeting was called to order at 7:00 p.m. by Chair Kuhn, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Kuhn, Vice Chair Gabbert, Commissioners McAuliffe, Monroe, Marx, Bradshaw, Parker and Vadset. Commissioner Maloney was excused.

3. APPROVAL OF AGENDA

VICE CHAIR GABBERT MOVED TO STRIKE AGENDA ITEMS 9 AND 10 AND MOVE ITEM 11 TO AFTER ITEM 7.c. COMMISSIONER MCAULIFFE SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 8-0.

4. APPROVAL OF MINUTES

COMMISSIONER PARKER MOVED TO ACCEPT THE JUNE 17, 1999 MINUTES AS PRESENTED. COMMISSIONER MARX SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 8-0.

5. PUBLIC COMMENT

There was no one in the audience wishing to address the Commission during this portion of the meeting.

6. REPORTS OF COMMISSIONERS

None of the Commissioners provided comment during this portion of the meeting.

7. STAFF REPORTS

There were no staff reports scheduled on the agenda.

8. AGENDA FOR THE NEXT MEETING

COMMISSIONER PARKER MOVED TO ACCEPT THE AGENDA FOR JULY 22, 1999 AS PROPOSED. COMMISSIONER BRADSHAW SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 8-0.

9. PUBLIC HEARING

a. Continued Public Hearing on the Zevenbergen Subdivision Proposal

Chair Kuhn said he has a list of people who signed up to speak at the commencement of the public hearing on June 3, 1999. He recalled that there were at least two groups, other than the applicant, who wished to make 20-minute presentations. There were also other individuals who were to be allotted three minutes each. He asked that anyone intending to speak at the public hearing sign up on the list if they did not already do so at the June 3 hearing.

Chair Kuhn advised that Commissioners Bradshaw and Vadset were not present at the June 3, 1999 meeting. He inquired if they had reviewed the record and exhibits and listened to the taped testimony to prepare them for the opportunity to participate in the process. Both Commissioners Bradshaw and Vadset stated they had reviewed the record and exhibits and had listened to the tapes of the June 3, 1999 public hearing and that they were ready to participate. Chair Kuhn inquired if any of the Commissioners had any *ex parte* contact with the applicant or any of the other interested parties since the last Commission meeting. None of the Commissioners indicated any *ex parte* communications. Both Commissioners Bradshaw and Vadset indicated that they did not have any *ex parte* communications before the June 3, 1999 hearing, either. Chair Kuhn inquired if anyone in the audience wished to challenge any Commissioner's participation in this public hearing. The public raised no issues.

Chair Kuhn advised that before people provide testimony before the Commission they must swear that their statements are true and correct to the best of their knowledge. He reminded everyone that Judith Bendor, the Hearing Examiner, is doing the SEPA hearing at the same time the Commission is conducting the subdivision hearing. She will issue a separate SEPA decision. He recalled that when the last public hearing ended, the representatives for the applicant had not finished their presentation. Therefore, they would proceed where they left off.

Ms. Bendor indicated that she has had no *ex parte* contacts, either.

Courtney Kaylor, attorney for the applicant, 2025 First Avenue, Suite 1130, Seattle Washington, 98121, swore that her testimony would be true to the best of her knowledge. She submitted, for the record, resumes of three of the experts who testified for the applicant at the last hearing. These are related to both the SEPA and the subdivision issue (Exhibit 5C is the resume for William E. Shiels, Talasaea Consultants; Exhibit 6C is the resume for John J. Altmann, Talasaea Consultant; and Exhibit 7C is the resume for Terry L. Gibson, PE, Gibson Traffic Consultants).

Ms. Kaylor noted that RCW.58.17.110 requires approval of the plat if the City finds that adequate provision has been made for drainage ways, streets, open spaces, parks and recreation, playgrounds, schools, sidewalks and other planning features that provide safe walking conditions for students and if the plat is in the public interest. Under SEPA, the City must issue a MDNS if the project, as designed and conditioned, would not result in significant adverse environmental impacts. She said the information that was submitted at the last hearing and that is contained in the staff report shows that the plat meets the criteria under plat approval, and as conditioned, would not have significant adverse environmental impacts.

Specifically regarding the issue of stormwater, Ms. Kaylor referred to the testimony of Gary Cooper and Dean Hough and the drainage report identified as Appendix 1 of the staff report. These all show that the stormwater system will be designed to contain the 100-year storm to DOE standards for limiting streambank erosion and will contain a bio-swale for water quality purposes.

As to traffic safety, Ms. Kaylor said the testimony from Mr. Cooper and Mr. Gibson and the traffic report that is Appendix 2 of the staff report show that adjacent roadways have the capacity to accommodate the traffic associated with the project. She advised that consolidation of driveways, provisions for a turn around area in the consolidated driveways and other proposed improvements assure that walking conditions for students will be safer than they are today.

As to open space, recreation space and playgrounds, Ms. Kaylor said Mr. Cooper's testimony and Exhibit 3C (Plat Map) show that most of one lot will be set aside for a recreation and children's play area. This more than meets the City requirements for 390 square feet of recreation space per lot. She noted that it is up to the City to decide whether the space should be privately or publicly owned and maintained.

Regarding schools, Ms. Kaylor said Mr. Cooper's testimony shows that the schools serving the plat are not at capacity and the students from this project would not cause overcrowding. In addition, Appendix 4 to the staff report states that the schools do not presently require the payment of impact fees.

As to trees, Ms. Kaylor advised that Mr. Cooper's testimony shows the applicant will preserve the existing trees outside of the building footprints and along roads as required by the MDNS. This will protect trees to the maximum extent feasible while permitting development. In addition, new trees will be planted along the north side of Access Tract A and along both roadways bordering the project. This exceeds the requirements of the Shoreline Municipal Code (SMC) Chapter 18.16, which requires street trees only along adjacent neighborhood collector and arterial streets.

Regarding wetlands, Ms. Kaylor said the testimony from Mr. Altmann (Attachment M to the staff report) indicated that there are no wetlands on the site. The testimony from Mr. Altmann and Mr. Shiels shows there are no endangered species on the site. In addition, the stormwater system, as proposed, will cause no significant adverse impact on endangered or other salmonids in Boeing Creek.

Ms. Kaylor stated the project is in the public interest because it provides needed, single-family, detached homes in the City of Shoreline. She further stated that the Plat meets all of the applicable City requirements and is conditioned to insure that it will not cause any significant adverse environmental impacts. She recalled that opponents of the plat have previously stated that the plat is not in the public interest because of the size of the lots. She suggested that a denial based on the number of proposed lots would be arbitrary, capricious and unlawful. The plat was vested to a zoning code that permits 5,000 square foot lots, and all of the lots in the proposal meet the lot size standard. She emphasized that the public interest criteria in the statute may not be used to impose a different minimum lot size requirement. She noted that this principle has been firmly established by the Washington Supreme Court. She cited the case of Norco Construction v. King County, 97 Wn.2d 680 (1982) in which the Supreme Court held that a local agency's discretion under the planning statute is limited by zoning and other adopted land use restrictions. The Supreme Court stated that while the planning statute permits local agencies to consider such factors as the public interest, interpreting this term as inferring unlimited discretion on the agency would make the other sections of the planning statute meaningless and would place plat applicants in the untenable position of having no basis for determining how they can comply with the law. 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.

Ms. Kaylor stated that the alleged inconsistencies with community character appear to be related to the size of the lots and do not justify a reduction in the number of lots under SEPA. The record shows that the plat will be developed with single-family, detached homes consistent with the character of the community. She stated that the plat, as mitigated, would have no significant adverse environmental impacts, and there is no factual basis for reducing the density under SEPA. In addition, she noted that conditions under SEPA must be based on policies incorporated into regulations, plans or codes that are formally designated by the agency as possible basis for the exercise of the SEPA authority.

Ms. Kaylor noted that the applicant has no objection to most of the conditions recommended by staff. In fact, they have incorporated nearly all of them into the plat map (Exhibit 3C). Based on the information presented to the Commission, however, she said the applicant requests some modifications. Ms. Bendor requested that the proposed changes to the conditions be provided in writing to eliminate misunderstandings.

Ms. Kaylor referred to Condition 1 which requires a soils report for the area that was previously filled. The applicant would like this to be clarified to require that the report be submitted prior to or concurrent with the building permit application. This condition was carried over from the King County MDNS that was previously issued for the fill (an Attachment to Appendix 4 of the staff report). It required a soils report prior to the development of structures. She submitted a letter from Gary Cooper (Exhibit 8C) explaining the practical reasons for this modification. Ms. Kaylor noted that the documents that are listed as attachments or appendices to the staff report are considered part of the record in this proceeding. She clarified that the MDNS being referenced is the one that was previously issued for fill by King County in 1991. It became part of the record during a previous hearing and is attached to the staff report dated August 17, 1998 (Appendix 4 of the current staff report).

Ms. Kaylor said they also request modification of Condition 2 (relating to drainage) in the July 18, 1998 MDNS. This condition requires the preparation of a downstream analysis, which has been provided by the applicant (Appendix 1 in the staff report). Therefore, this condition should be updated to eliminate the requirement for further study and, instead, require that the drainage system be designed as currently proposed (a 100-year storm detention to DOE standards for streambank erosion with a bio-swale).

Ms. Kaylor referred to Condition 1 in the staff report regarding density. Applicants request that this be modified to provide that the number of lots be reduced to 13. She noted that the applicant has voluntarily reduced the number of lots to 13 by turning one lot into recreational space. As previously discussed, any further reduction would be illegal. Chair Kuhn requested that Ms. Kaylor further clarify why the reduction in the number of lots allowed would be illegal. Ms. Kaylor answered that because the plat is vested in a zoning code that permits 5,000 square foot lots and all of the lots in the plat are greater than 5,000 square feet, the number of lots being proposed is permitted by the zoning code. Although the planning statute allows the City to consider public interest, it does not give the City unfettered discretion to impose requirements that are not contained in adopted codes. The zoning code would allow the applicant to apply for up to 14 lots.

Ms. Kaylor said the next condition Applicants would like to have modified is Condition 2 of the staff report related to filling and grading. Applicants request that this condition be clarified to indicate that filling and grading can occur only after the staff has approved a clearing and grading plan for the plat and verified compliance with plat conditions, as opposed to approval of the final plat by the City Council. The reason for this request 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.

Ms. Kaylor referred to Condition 3 of the staff report, which relates to the children's play area. Applicants are requesting that this condition be modified to provide that the playground be located within the on-site recreation area as per code requirement SMC 18.14.190.

Finally, Ms. Kaylor requested that Condition 15 of the staff report regarding endangered species be eliminated because it has already been satisfied. She recalled that at the last meeting, Mr. Shiels testified that the plat would have no significant adverse impact on salmonids in Boeing Creek, including the Chinook Salmon. The applicant feels that Mr. Shiels' analysis meets the requirements of this condition.

In addition, Ms. Kaylor noted that she and Gary Cooper requested a meeting with representatives of the neighbors in an effort to resolve the differences related to the proposal. As a result of this meeting, they agreed to not object to many of the additional plat conditions proposed by the neighbors. She said she would be able to comment regarding the conditions after the neighbors have made their presentation.

Ms. Kaylor said based on the information that has been provided, the applicant believes the plat, as conditioned, meets the criteria for plat approval and will have no significant adverse environmental impacts. Applicants request that the Planning Commission alter the conditions set out on Page 24 of the staff report and conclude that the plat, as currently proposed and conditioned, meets the requirements for plat approval. Applicants ask that the Planning Commission recommend the City Council approve the plat as currently proposed and conditioned. They further recommend that staff issue a revised MDNS, including the conditions recommended by staff, with the modifications she has requested.

Chair Kuhn referred to Hearing Examiner Burke's decision that careful consideration of the density allowed and the best interest of the public welfare be made. In addition, staff requested that the applicant address the neighborhood character issue in a legal memorandum. However, the applicant has not presented any information related to how the development comports with the character of the community. Ms. Kaylor answered that she submitted a legal memorandum prior to the last hearing to address the community character issue. Chair Kuhn recalled that Ms. Kaylor's memorandum states that community character is not an element of the environment. Ms. Kaylor suggested that the issue of

community character has become tied up with the issue of density. She said her memorandum addresses the issue of density at great length. From a factual basis, she believes that a number of points relating to community character were discussed at the last hearing. The proposal is for a single-family, detached subdivision, which is consistent with the surrounding neighborhood. In addition, the plat will include the planting of more trees than is required by the code. The plat includes significant street improvements which affect the community character and improves safety for the students. The proposed park will also address the issue of community character by providing open space within the plat.

Chair Kuhn said that the staff report indicates that the applicant has failed to demonstrate that the proposal, with 14 lots, is consistent with the character of the neighborhood. The staff has recommended 12 lots, and the applicant is now proposing 13. He said has not heard anything from the applicant regarding how the 13 lots would fit in with the character of the community. Ms. Kaylor said they respectfully disagree with the staff, and feel that the reduction to 12 lots would be illegal. She suggested that there is no evidence in the record to indicate that the reduction would make any difference in terms of community character. It would provide an insignificant increase in the lot size. She suggested that, fundamentally, the community character issue has been centered on lot size, which is governed by the zoning code. The application is vested to a zoning code that allows 5,000 square foot lots. She understands that the neighbors, along with a number of City officials, do not like the existing code, and that is why they have adopted an emergency ordinance. Chair Kuhn clarified that the ordinance is not an issue in this hearing. Ms. Kaylor agreed, but since the issue of community character seems to be related directly to lot size, they must look at what is permitted in the zoning code. She said the applicant has made a significant effort to try and address all of the issues that have been raised by the neighbors.

Chair Kuhn questioned Ms. Kaylor concerning the applicant's position on the issues of community character, lot size, density and any resultant impacts. Ms. Kaylor said there are a number of impacts that could relate to density, but the applicant has submitted information, along with information in the staff report, to demonstrate that all of the impacts have been mitigated to a level that is less than significant. For instance, traffic is an impact that is directly related to density. But, in this case, they have submitted a traffic study showing that traffic impacts resulting from the plat will be less than significant. Ms. Kaylor said she does not feel it is defensible to say that a significant impact arises from having 13 lot instead of 12. All the issues not related to the square footage have been addressed. The only issue left is a pure square footage issue, which is governed by the zoning code. In addition to the density issue, Ms. Kaylor said they discussed a number of non-density related features the neighbors would like included as conditions of the proposal.

Mr. Cooper said that the maximum and minimum number of lots allowed on a site cannot be arbitrarily made. The Growth Management Act states that the maximum number of lots for this site should be 14 and the minimum should be 12. This figure was identified to provide future services for the maximum density allowed. King County requires that if less than the minimum number of lots is created, then it must be shadow platted to show where all the roads would be for a 12 to 14 lot plat. This is not an arbitrary number that is set up for the City to limit the number of lots. It states that the property owner is legally allowed to place up to 14 lots on the property and no less than 12. There is nothing that allows the City to pick 12 because of density issues raised by surrounding properties. These homes will be two-story homes that fit into the character of the existing homes in the area. The 5,000 square foot lot size cannot become an issue at this meeting. They have met the 5,000 square foot lot size requirement. They have met all of the rules and regulations to plat the maximum 13 lots. The code does not call for a reduction, by arbitrary means, to 12 lots. Ms. Kaylor noted the survey Mr. Cooper referred to is identified as Exhibit 9C (description of homes in the neighborhood and the assessor's map).

Commissioner Bradshaw requested a legal definition for "character of neighborhood" which applies to this particular neighborhood. Bruce Disend, City Attorney, suggested that "character of the neighborhood" is an inappropriate phrase. The Hearing Examiner's decision does not reference the character of the neighborhood. In his findings, he states on Page 11, that it appears the staff reasonably considered these items in an appropriate manner (the items under the MDNS) except character of the community and endangered species. As the applicant pointed out, Mr. Disend said the SEPA regulations do not include the phrase "character of the community." The closest is the reference to "aesthetics." Aesthetics tends to be in the eye of the beholder unless the jurisdiction has adopted regulations which set forth some definition or clarity.

Commissioner Bradshaw inquired if there is a definition for "character of the community" or "aesthetics." Mr. Stewart said the Hearing Examiner's request for consideration of the character of the community was an issue for which staff had hoped to receive a response from the applicant. They had requested the applicants to provide a legal memorandum that would argue why this should or should not be a matter of debate, but this was not received. Commissioner Bradshaw inquired if there is anything in the Code that would allow the City to approve or deny an application on a community character basis. Mr. Stewart said the SEPA regulations reference aesthetics as a consideration, but that is not the Planning Commission's discretion. Commissioner Bradshaw said it appears they are talking about an issue that is not defined. Mr. Disend agreed. The "wherefores" made by the previous Hearing Examiner fell under his findings related to the SEPA determination, which is within the purview of the Hearing Examiner. Chair Kuhn noted that since this is a combined hearing, these issues can be discussed, and may help Examiner Bendor reach a decision. Commissioner Bradshaw noted, however, that the Commission cannot base their decision upon that information.

Vice Chair Gabbert inquired if there was anything in the King County Comprehensive Plan in force at the time of application that would give any definition to "character of the neighborhood" or the intent behind infill subdivisions. Mr. Disend deferred this question to the Planning Staff. Vice Chair Gabbert suggested that perhaps the neighbors have some testimony regarding this issue. Mr. Stewart said the discussion regarding the Comprehensive Plan is found on Page 13 of the agenda packet. It includes a number of policies that were considered when reviewing the application.

Commissioner Monroe inquired if a discussion regarding aesthetics could take into consideration the character differences of this project compared to the community as a whole (bulky, large houses on small lots as opposed to what currently exists). Mr. Disend said the state subdivision law requires that the Commission takes into account certain items such as adequate provisions for streets, sewers, etc. and that it is also be in the public interest. Mr. Disend surmised that it is the latter point that is under consideration by the Commission at this time, and it is a difficult determination to make. The law of the state requires the Commission to point to an adopted City plan or policy regulation that identifies or gives effect to the criteria. They may point to any plan that gives a basis for differentiating this proposal from others. He recommended the Commission take into account the evidence presented during the hearing that would qualify the reduction of impact associated with one less lot. The Commission is not entitled to operate on the basis of what seems right. They are obligated to consider the applicable regulations and rule accordingly.

Ms. Bendor referenced the King County Comprehensive Plan Policies (Page 13 of agenda packet), and requested clarification as to how they were applied by the City of Shoreline. Mr. Stewart answered that the City adopted them. Ms. Bendor specifically referenced U-504 which states that King County should apply minimum density requirements to all urban residential zones of four or more homes per acre. She asked for further clarification on this issue. Mr. Disend answered that when there is a zoning regulation

which identifies a density, that zoning regulation would take precedence if there is a conflict between the plan and the zoning regulation. Ms. Bendor inquired if Mr. Disend believes there is a conflict. Mr. Disend said he does not believe there is a conflict. Mr. Stewart said this policy, as it relates to the subject application, would apply to the zoning district. In this zoning district the minimum density is greater than four dwelling units per acre. The minimum density requirement of 12 units would comply with the policy of four units per acre.

Ms. Kaylor clarified that U-504 in the Comprehensive Plan states that the minimum density in all residential zones be four homes per acre. U-502 states that King County shall seek to achieve an average zoning density of at least seven to eight homes per acre in an urban growth area, which this plat is located in. She noted that under the Growth Management Act, the counties are required to adopt Comprehensive Plans with consistent development regulations. In this case, the City of Shoreline's zoning code implements, and is consistent with the provisions, of the Comprehensive Plan by designating various properties within the jurisdiction for development of different densities. The subject property is designed for development at six units per acre. This yields the lot count the applicant is proposing.

Ms. Kaylor commented regarding the relationship between the bulk of the homes and lot size, which is dictated by the zoning code. The applicant will not build houses that are larger on this site than permitted by the setback and height restrictions for the zone.

Chair Kuhn admitted Exhibits 1C through 9C into the record as requested by Ms. Kaylor. In addition, Chair Kuhn admitted Exhibit 10C (Memorandum to Chair Dan Kuhn from K.E. Cottingham) and Exhibit 11C (Letter to James Holland regarding density from Jeffrey and Joan Corliss) into the record for both the SEPA and subdivision hearings. Ms. Kaylor clarified that the exhibits and her testimony are offered for both the Planning Commission and to the Hearing Examiner.

Catherine Shaffer, 17522 - 6th Avenue Northwest, swore that the testimony she would provide is true and accurate to the best of her knowledge and pertains to both the subdivision and SEPA hearings. She recalled that there was a large amount of public testimony that was introduced prior to the September 3, 1998 public hearing on this matter. She assumes that for purposes of this hearing, the Commission and Hearing Examiner will accept the previous testimony that has been provided without requiring the public to repeat everything that has been said thus far. Ms. Bendor said she can review the exhibits that have been previously provided, but if she is being asked to review the tapes, she would have to be so instructed. Ms. Shaffer said that when the appeal was brought before the Hearing Examiner, the neighbors prepared transcripts of the public hearings.

Chair Kuhn suggested that when this matter was referred to the Planning Commission for a new hearing, there was nothing left on the record. Therefore, nothing that was presented prior to the present hearing would be incorporated into the decision. Ms. Shaffer disagreed. She noted that this issue was remanded back to the Board for a new SEPA hearing. But, she did not believe all of the prior factual information that was presented to the Planning Commission would be blotted out.

Mr. Disend said Hearing Examiner Burke's decision is not entirely clear on this subject. The decision states that the subdivision was remanded back to the staff and Planning Commission for an entirely new SEPA review, publication process, public hearing and recommendation to the City Council. It further states that the request to remand for a full and complete public hearing on both the subdivision and the MDNS determination was granted. Hearing Examiner Burke used the word "new" in regard to SEPA. He did not use the word "new" in regard to the subdivision. He suggested that it is within the

Commission's discretion to make this determination. Chair Kuhn noted that the Commission did not have this information to review during the previous portion of this public hearing. Including this information would require that the Commission take time to refresh their memory regarding things that were presented months ago. Ms. Shaffer said the residents put a lot of work into the presentation they made to the Commission and into their appeal. They want the Commission to take their time to consider all of the information that has been submitted thus far.

Chair Kuhn suggested that if the previously submitted information is to be reviewed, then any of the information presented by the public at the current hearing should exclude the previous information. Ms. Shaffer inquired when they would have the opportunity to address the issues that were discussed previously. She noted that the applicant received time, over and above what was supposed to be allotted, to make her presentation.

Ms. Shaffer said the issue before the Commission is the Hearing Examiner's decision to grant the neighbors' appeal. She referred to the language of that provision. In his findings, he specifically found that staff's consideration of said subdivision was reasonable and appropriate except in regard to character and endangered species. Ms. Shaffer noted the many questions about the authority of the Hearing Examiner to be concerned about the character of the community. The character of the community involves more than just the size of lots. She said the Shoreline Municipal Code 18.02.030 requires the harmonious grouping of compatible and complimentary land uses. It states that the purpose of zoning is to preserve neighborhood character. That is an overall instruction to the Commission in making zoning decisions. In addition, Ms. Shaffer asserted the Comprehensive Plan Policy U-515 requires urban residential neighborhood design preserve historic and natural characteristics and neighborhood uniqueness while providing for privacy, community space, pedestrian safety and mobility and the impact of motorized transportation.

Ms. Shaffer maintained that the Hearing Examiner's decision specifically required that careful consideration of the density allowed in the best interest of the public welfare and the neighborhood development should be linked. In addition, the Commission can receive further instruction from RCW.58.17.110. It does not say that anything that complies with the local zoning code is in the public interest. It does not refer to the local building code. It states that the Commission must make express findings that the subdivision and the SEPA issue before them are in the public interest. It does not say that they have to do that with some general, undefined public interest term. It says the Commission has to make specific findings with regard to the enumerated provisions of the statute. The statute requires that the Commission shall inquire into the public use and interest proposed to be served and determine if appropriate provisions are made for, but not limited to, the public's health, safety and general welfare, for open spaces, drainage, streets or roads, alleys, other public ways and transit stops, critical water supplies, sanitary waste, parks and recreation, playgrounds, schools and school grounds and consider all other relative facts including sidewalks and other planning features that ensure safe walking conditions for students who only walk to and from school. They must also inquire whether the public interest would be served by the subdivision. The opposite to this requirement is that the City shall not approve a subdivision without written findings that these matters would provided for and the public interest would be served.

Ms. Shaffer suggested that the public interest statute is the heart of the decision. She added that the Zevenbergen subdivision proposal does not meet this statute. She referred the Commission to the only proposal that the neighbors have been privileged to see on the notice they received before the applicant started making amendments. She said they would ask that this be marked as Exhibit 12C (original subdivision proposal). Ms. Shaffer said the staff looked at this subdivision proposal again after the

Hearing Examiner recommendation, and she asked that the enlarged copy of the staff's conclusion be identified as Exhibit 13C. Staff stated that the applicant failed to demonstrate that the proposal for 14 lots is consistent with the character of the neighborhood.

Ms. Shaffer provided an assessors map of the neighborhood as it exists today. She asked that this color-coded map be identified as Exhibit 14C. She explained that the green areas identify the location of the proposed subdivision. The orange areas indicate the cul-de-sacs in the neighborhood. The area around the proposed subdivision is entirely cul-de-sac. She pointed out that a density survey was completed by Paul Cho, from the neighborhood, and was provided at the September 3 hearing. It pointed out that the homes in the cul-de-sacs are quite large. She provided photographs A, B, C, D, E and F which identify each of the cul-de-sacs on Exhibit 14C. The photographs were identified as Exhibit 15C. She described the location of each of the cul-de-sacs. Ms. Bender inquired if the pictures were taken with a camera and if any computer alterations were done. Chair Kuhn clarified the question of whether or not the photographs accurately reflect what they purport to show. Ms. Shaffer indicated that they do and no alterations occurred. They provide an accurate description of the neighborhood.

Ms. Shaffer pointed out that the surrounding neighborhoods are well established by the cul-de-sac design and by the size and placement of the homes. Vice Chair Gabbert inquired why there are no pictures of the lots that are more adjacent to the site that seem to be smaller. Ms. Shaffer said the lots adjacent to the site are actually larger lots. They tried to take photographs of areas where there are multiple homes clustered together. Most are set up in cul-de-sacs. Commissioner Bradshaw clarified if the section that is blue on the west side of the proposed subdivision is all one property. Ms. Shaffer said that it is actually divided where the property boundaries are. Ms. Shaffer said the blue area identifies houses that have their own turn-around areas. The orange area identifies houses that are located on cul-de-sacs or private driveways. The yellow indicates houses with driveways that access straight from the street.

Patty Macaulay, 17804 - 6th Avenue Northwest, said that the testimony she provides will be true to the best of her knowledge. Ms. McCaulay explained that the white areas on Exhibit 14C indicate the side streets. They are not considered the busier streets and have very little traffic. Many of the homes in this area back out onto the street. She identified the street as 182nd. Vice Chair Gabbert inquired if there are any sidewalks in the neighborhood. Ms. McCaulay said there are none in the immediate vicinity. It is mostly undeveloped gravel. She said when they talk about the character of the neighborhood, they are not talking about the size of the lots alone. They are not talking about numbers alone. They are talking about the existing appearance and traffic in the neighborhood. They are talking about the children who have to walk to school past this subdivision. They are talking about the existing trees in the neighborhood and a density level that is considerably bigger that 5,000 square feet.

Ms. Shaffer said they applied the steps for carefully evaluating the Zevenbergen proposal in light of the Hearing Examiner's decision. The agree with all of the staff's conditions. They are all appropriate and should be adopted as they stand. They wouldn't, however, object to the modification to the stormwater condition as suggested by the applicant.

Ms. Shaffer said the Commission has heard some argument that the public interest begins and ends with the zoning code, which is not so. That is not what the Hearing Examiner's decision or the statute reflects, and it is not what the case law reflects. While they weren't privileged to see the applicant's June 2, 1999 memorandum to staff, they were able to write a memorandum to Hearing Examiner Burke. She noted some of the citations in that memorandum that indicate that the public interest is broader than a mere zoning code. The Hearing Examiner was asked to look at the following cases: Trimen

Development v. King County, 124 Wn.2d 261) states that statute 58.17.110 requires local government to insure the proposed plat makes appropriate provisions for public health, safety and general welfare. In the case of the Dept. of Natural Resources v. Thurston County, 92 Wn.2d 656 the court upheld the denial of a preliminary plat on environmental grounds even though it complied with the county code and platting statutes. It states that a legislative authority can withhold approval if appropriate conditions have not been made for public health, safety and general welfare. The case of Cobb v. Snohomish County, 64 Wn.App. 451 (1991) upheld that the county had authority to require improvements that were reasonably necessary to mitigate the direct impact of the proposed development. A city can impose conditions that are valid exercises of the municipality's police powers and directly related to the impact of the proposed plat. In the case of Sparks v. Douglas County, 127 Wn.2d 901 (1995) the court upheld the conditions of a proposed short plat application based on substantiated traffic concerns. She pointed out that this same thing can also be found in Luxemburg v. Snohomish County, 76 Wn.App. 502 (1995); Viewridge Park v. Mountlake Terrace, 67 Wn.App. 588 (1992) and Miller v. Port Angeles, 38 Wn.App. 904, 691 P.2d 229 (1984). She said she would be happy to provide copies of that memorandum. It was marked as Exhibit 16C (memorandum to Hearing Examiner Burke regarding briefs in support of appeal of preliminary plat approval dated 2/99).

Ms. Shaffer said the primary concern, besides stormwater, is the impact to the character of the community. The neighbors feel the proposal is getting close to an acceptable state from their point of view. They have thought about possible conditions, besides those proposed by staff. They met with the applicant and discussed each condition. A neighborhood meeting was held both before and after the meeting with the applicant.

Ms. Shaffer said the first major condition they propose is a maximum density of 12 lots plus one recreation area. She said the staff conditions do not require the recreation area—only the limit of 12 lots. The additional conditions were entered into the record as Exhibit 17C (dated 7/15/99). An oversized copy of a portion of Shoreline Municipal Code (SMC) 18.14.180 was also entered into the record as Exhibit 18C. Ms. Shaffer said the proposed recreation area is different than the playground that is proposed to meet the requirement of SMC 18.14.180 that residential developments of more than four units shall provide recreation space for leisure play and sports activities as follows: residential and town houses developed at a density of eight units or less per acre must provide a recreation area of 350 feet per unit. The original proposal of 14 units would have required a recreational area of 5,460 square feet, which is a lot bigger than a 20' by 20' play area. For 12 lots, the recreation area must be 4,680 square feet. They ask that this be adopted as a formal condition of the subdivision. She noted that the applicant suggested this condition in their new version of the proposal, but it is not required as a formal condition of approval. It must be required to be legal with the zoning code.

Ms. Shaffer said the group is asking that a requirement for a 100-year storm detention in accordance with the streambank erosion control standard be a condition of approval. They are asking that the City formally require a bio-filtration swale as a condition. Ms. Bendor asked Ms. Kaylor to identify the proposed conditions she is opposed to. Ms. Kaylor asked that she be allowed to review the proposed conditions again before responding. Ms. Shaffer said the neighborhood group supports the development of a bio-filtration swale and the standard oil/water separator as per the King County Surface Water Design Manual core requirements 3 and 4. She provided a letter from an engineer regarding this change which was entered into the record as Exhibit 19C (Letter from Gardow and Leudtke dated 5/13/99 to Mary Leonard and Jane Cho). She said that while the applicant is willing to do this, it is not a condition.

Commissioner Bradshaw recalled that the report indicated that an oil separator in this location is not a good idea because it will not be maintained. Ms. Shaffer suggested that it could be maintained by

requiring it as a covenant for the neighborhood. The applicant has indicated that they don't have a problem with either the City maintaining the bio-swale or having the people who move into the new development maintain it through a covenant.

Jane Cho, 1784 5th Avenue Northwest, indicated that she swears to tell the truth to the best of her knowledge. She commented that instead of the bio-swale, the original proposal called for an oil separator. According the staff technical report, that was not feasible. The bio-swale is different. The oil separator is not in lieu of the bio-swale. Commissioner Bradshaw clarified that the group is asking that a condition for approval require that a bio-swale and a standard FROPT oil/water separator be provided. He suggested that it is likely that this will not be maintained. Ms. Shaffer answered that in the neighborhood discussions, the applicant has indicated that they are thinking of placing the bio-swale in the area that is used for recreation. The neighbor's concern is that the bio-swale be maintained. They feel that either the City must maintain it or require the people that move into the subdivision to do so.

Ms. Bendor recalled that staff has recommended that a bio-swale be required. Mr. Stewart said the maintenance issue is referenced in Condition 13 on Page 33. The maintenance responsibility will depend upon how the condition is structured. He added that either the City or the private property owners would be responsible for the maintenance, depending on the provisions that are made. Ms. Shaffer clarified that the neighborhood would like the condition to require both the bio-filtration swale and the oil/water separator. The maintenance should be part of the homeowners agreement for those who live in the subdivision.

Commissioner Monroe noted that if the bio-filtration swale and oil/water separator are not maintained, the conditions will be worse than bad. He inquired if the neighborhood group would be willing to enter into an LID with the City so that the City could take responsibility for this. Ms. Shaffer said the City has a lot to do, and they would like to see the people who actually live in the subdivision be responsible. Commissioner Monroe questioned how this would be enforced. Ms. Shaffer felt that the neighbors, who are also part of the agreement, could enforce this type of agreement. The group feels that maintenance of this area is critical.

Ms. Shaffer referred to a set of plans which go along with the conditions. These were identified as Exhibit 20C (Proposed Alternative Design 1), Exhibit 21C (Proposed Alternative Design 2) and Exhibit 22C (Proposed Alternative Design 3).

Commissioner Bradshaw inquired which of the cul-de-sacs has similar stormwater treatment facilities as they are asking of this subdivision. Ms. Shaffer said they have not examined how each of the cul-de-sacs were approved. The staff would be better able to answer that question. The bigger issue is that this subdivision is being proposed in the wake of what they all know about stormwater. She suggested that when the other cul-de-sacs were developed the residents didn't know or understand the impacts associated with the development.

Ms. Shaffer entered Exhibit 23C (Green Proposed Alternative Design 1), Exhibit 24C (Yellow Proposed Alternative Design 2) and Exhibit 25C (Blue Proposed Alternative Design 3) into the record. She referred to Design 1, which is the alternative the neighborhood group prefers. She noted that the designs were created after meeting with the applicant, and the neighbor's strongly felt that the number of lots should be 12. They discussed what would be a feasible design to address their concerns about the character of the community. Design 1 appears to be feasible and doable. She particularly noted that this design does not include Tract A

The Commission went off record at 8:40 p.m. They reconvened the meeting at 8:49 p.m.

Commissioner Bradshaw said that during the break, a citizen spoke to him about the oil/water separator issue which could be considered an *ex parte* communication. No one in the audience challenged his continued participation.

Chair Kuhn inquired if Ms. Shaffer is suggesting that the Commission choose one of the neighborhood group's alternative designs. He clarified that the proposed designs are helpful to show that other options are available for the project, but he emphasized that the Commission would not involve themselves in the design of the project. Ms. Shaffer said the proposed design emphasizes issues that are critical to the neighborhood.

Ms. Shaffer noted that Mr. Disend and she had a brief conversation during the break which could be considered. She said Mr. Disend pointed out that he is not particularly clear regarding the state of the record as it relates to the prior letters and testimony that was submitted at the previous hearing. She said it is her understanding that the Commission will consider as part of the record for this hearing, the prior letters and testimony from the neighbors without requiring that it be repeated. Chair Kuhn suggested that Ms. Shaffer would have to make that request, and Ms. Shaffer moved that all prior testimony and information that was presented by the neighbors at the previous hearing also be considered as part of the current hearing. Ms. Bendor noted that Appendix 3 has the letters that were submitted at the prior hearing, but it does not include the oral testimony. Mr. Disend inquired if Ms. Shaffer's motion is that the testimony and other exhibits submitted in the prior hearing, either side, should be moved to the record of this hearing. Ms. Shaffer indicated that is correct. Chair Kuhn accepted the evidence as proposed.

Chair Kuhn said there are individuals who are concerned about being able to give testimony. He noted that Ms. Shaffer has had the opportunity to speak for 40 minutes. He inquired how much longer she anticipates she will need to address the Commission. Ms. Shaffer indicated that her presentation would take an additional 10 minutes.

Ms. Shaffer again referred to the green design 1 (Exhibit 20C), and noted that Tract A (a street proposed in the subdivision) is moved from its current location. If this design is used, the concerns of the residents with homes facing Tract A would be eliminated. Vice Chair Gabbert inquired if the proposed design drawings are done to scale. Ms. Shaffer replied that they are. She suggested that if Tract A is eliminated, the noise and tree removal would be minimized. She noted that there is only one entrance and exit to the property, which is a critical concern because of the children who walk to school and because of the traffic going by this property. She noted that Design 1 would place the entrance and exit for the subdivision on a less busy street. She said the proposed conditions that reflect this issue are 5, 7 and 8. Design 1 also addresses Condition 6 in making sure that the size of the lot containing the existing house be commensurate with the other lots to lower the likelihood of future subdivision and to provide additional size to other lots in the proposal.

Ms. Shaffer said Condition 9 is an important aesthetic condition for the neighbors. When they were before the Hearing Examiner, staff indicated that they did not support a cul-de-sac design because they did not want houses with their backs facing towards the street. They wanted the houses to have their fronts facing out because that is the current design of the other houses in the neighborhood. Condition 9 would require that new homes be constructed with their fronts facing out towards Northwest 180th. Ms. Shaffer said the neighbors also recommend that a condition be placed on the property requiring that the homes be built to a two-story maximum and all in uniform color and design. The applicant has indicated

that they are willing to agree to this. She entered the letter from Courtney Kaylor, attorney for the Applicant, to Jane Cho, Catherine Shaffer and Michael O'Connell dated 7/7/99 as Exhibit 26C.

Ms. Shaffer said another condition they would like placed on the proposal would require an agreement from the homeowners in the new subdivision to keep large vehicles such as RV's and boats off the street. They would also like the owners to provide the maintenance for landscaping in the subdivision, including the bio-swale.

Ms. Shaffer said that Condition 13 would require that the applicant preserve as many trees as possible, which is critical to the surrounding property owners. The applicant has indicated that this would not be a problem. They would, also, like to require non-glare street lighting for traffic safety and aesthetic purposes.

Ms. Shaffer provided an oversized copy of the Intersection Design for Northwest 180th and 6th. This was entered into the record as Exhibit 27C. She recalled that the group did not feel the traffic study provided by the applicant provided a full representation of the existing situation. There was also the assumption in the traffic study that it is good to have more traffic because there are two-way roads. This is a quiet neighborhood, and they do not want to provide for more traffic. They also didn't like the fact that the applicant's traffic study suggested a turn lane and a wider intersection. The people who already use this area to get to 145th Street to access I-5 would be provided with a better opportunity to short cut through the residential area. That is a major safety and aesthetic concern to them. They talked with the City Engineer regarding an intersection design that would address the group's concern that there be as much sidewalk as possible and that the intersection be designed to discourage as much traffic as possible. Exhibit 27C is the result of that conversation, and Ms. Shaffer said her understanding is that the applicant does not have a problem with doing this type of intersection design. She noted that this issue is addressed in Conditions 15, 16 and 17.

Ms. Shaffer said they are concerned about the speed of traffic through the area, and they provided a study at the previous September 3, 1998 hearing. People speed through this area and ignore the stop sign that is currently located at the intersection of Northwest 180th and 6th. They are asking the City to require the applicant to put in a sign (Condition 18) that would slow the traffic down to 20 MPH when children are present and indicate that fines would be dealt for infractions. They also request a blinking light to slow the traffic down further.

Ms. Shaffer said the group proposes that Condition 19 require a final review of the engineering plan. They are, also, concerned about plans to minimize the transport of sediment to adjoining properties during construction, and they would like this issue to be addressed by Condition 20. Ms. Bendor inquired if this is a standard City requirement. Ms. Shaffer said this is not one of the construction requirements of the City. She advised that Condition 21 would require that the development take place after March of 2000.

Ms. Shaffer referred to the vesting argument presented by the applicant. She referred to Exhibit 18C, the Municipal Code provision for the recreation area. The applicant has said that they are vested at 5,000 square feet per lot because that is what existed when they proposed this project before the emergency 7,200 ordinance was passed. She suggested that the applicant is legally wrong. The group believes that the project was unlawful under the zoning code for two reasons. First, the general zoning code provision she quoted and cited related to the character of the community. But more important, an applicant is required, when building at a density of 14 units, to provide a recreational area of 5,460 square feet. No such recreation area appeared in the applicant's original proposal. In addition, the applicant did not meet

the requirements of B.4 of the zoning code provision that single-detached or townhouse subdivisions which require at least 5,000 square feet of recreation space provide a street, roadway or parking area frontage along 10 to 15 percent of the recreational space perimeter. They reviewed the original proposal for a recreational area that met the requirements of 18.14.180.A.1 and B.4. No such recreation area appears. She suggested that is why the applicant is willing, in their new proposal, to put in a recreation area and give up one of the lots to do it. But that does not change the fact that when they submitted their subdivision proposal to the City, it was not lawful under the zoning code. It did not vest. Commissioner Monroe inquired if Ms. Shaffer is implying that the staff accepted an incomplete application. Ms. Shaffer said they accepted an application that was unlawful under the existing zoning code at the time. She said she does not believe there is any room for disagreement unless one leaves out the requirement identified in 18.14.180.B.4, which is not possible.

Ms. Shaffer pointed out that the neighbors have been very attentive and thoughtful regarding this process. They have provided very detailed reasons to the Hearing Examiner to substantiate their concerns related to the public interest and hearing procedures. They are coming before the Commission again after considerably more work to propose reasonable conditions which will require some minor adjustments to the subdivision proposal. She thanked the Commission for the chance to be heard.

Vice Chair Gabbert noted that a number of case laws have been quoted. He asked the City Attorney to advise the Commission as to their relevance to this case. Chair Kuhn asked the City Attorney to take the cases cited by both the applicant and the neighborhood group and provide the Commission with a written analysis.

Vice Chair Gabbert inquired if the required recreation space can be complied with by counting the actual open area within the provided lots. James Holland said this issue was discussed during the appeal before the Hearing Examiner. The information staff presented to the Hearing Examiner was that the recreational space provision in the zoning code was adopted when the minimum lot size in the R-6 residential zone was 2,500 square feet. Subsequently, this lot size was raised to 5,000 square feet and is now 7,200 square feet. At that time, staff noted that the intent of the recreational space regulations was focused quite clearly on lots that were 2,500 square feet. The King County Council, and subsequently the City of Shoreline, had made the determination that with the 2,500 square foot lot size being permitted in an R-6 zone, additional recreation space would be necessary. However, circumstances have changed and the lot sizes have been doubled. Staff argued that given this change and based upon the language of the code, the lot sizes were such that the recreational space standard of 340 square feet per unit could be provided in each individual lot. Therefore, the only requirement that stood for this plat was for the provision of a children's play area. The Hearing Examiner accepted that argument. Mr. Stewart added that the Shoreline Municipal Code 18.14 references the preliminary plat approval condition on the original plat to provide a children's play area no less than 20' by 20'.

Commissioner Monroe inquired if the Planning Commission could take the opposite opinion than what was accepted by the Hearing Examiner. Vice Chair Gabbert asked the City Attorney if staff's interpretation is legitimate. Mr. Disend said it is difficult to provide an interpretation regarding this issue because he would be rendering a decision on behalf of the Commission. The Commission, as the recommending body, must determine amongst themselves what the appropriate determination is. Ms. Bendor noted that is not a SEPA issue.

Michael O'Connell, 620 Northwest 182nd Street, stated that his testimony would be true to the best of his knowledge. He provided a document to the Commission, staff and the applicant entitled VESTING: ZEVENBERGEN PROPOSAL MUST COMPLY WITH ORDINANCE 170. It was identified on the record as

Exhibit 28C. He noted that the Hearing Examiner did not find that this code provision should be repealed. The code provision 18.14.180 and 190 is the law of the City. Although it might have come into existence in a particular manner or form, it remains the law until such time as it is appealed. The Hearing Examiner cannot waive it. Applying and upholding the law is the responsibility of the Commission and the City Council. This requires that there be at least 390 square feet of recreational space for each unit. Under 18.14.180.B.5 it states that it must be centrally located and accessible and convenient to all residents. The proponent's original proposal, in affect at the time that ordinance 170 was adopted establishing a 7,200 square foot minimum lot size requirement, did not include any recreation area (either the 5,000 or the 20'by 20'). There was no recreational space included in the original proposal. Therefore, the proposal was illegal and could not have been approved. Since it was illegal at the time the City adopted Ordinance 170, any development of the property must comply with Ordinance 170.

Mr. O'Connell explained that the neighbors who have agreed to support the subdivision of 12 lots do so by compromising and acknowledging what the law requires today. If the appellant rejects that compromise, then the City must uphold the law that requires a minimum lot size of 7,200 square feet. Chair Kuhn inquired if Mr. O'Connell stated that a provision of the Shoreline Municipal Code cannot be waived or compromised, if applicable. Mr. O'Connell said the Hearing Examiner cannot waive this requirement, but the Commission has the ability to compromise. Chair Kuhn suggested that if the Hearing Examiner does not have the ability to waive a provision of the SMC, then the Commission could not compromise, either. Mr. O'Connell suggested this is something the Commission and the City Attorney must decide. The neighborhood has indicated that they are willing to compromise. But, the applicant has proposed an application that is illegal.

Mr. O'Connell provided oversized copies of the neighborhood pictures E1 through E5. They were marked as Exhibit 29C. He also entered oversized copies of the neighborhood pictures E6 through E10 into the record as Exhibit 30C. Mr. O'Connell stated that the pictures accurately reflect what they propose to show. Mr. O'Connell reviewed that Picture E1 is 6th Avenue looking south on the west side of the road. In the upper right hand corner of the picture, there is a sign identifying the school zone and Sunset Elementary which is 1,000 feet away. His daughter walks to that school upon occasion. Picture E2 is further down the road towards the intersection of 6th Avenue and 182th. Mr. O'Connell said the purpose of Exhibits 29C and 30C is to show the risk that the proponent's Tract A access would cause to those walking or driving down 6th Avenue which was not apparent in the pictures provided by the staff. He identified where Tract A would be in Pictures E1 and E2. He said that Picture E4 shows how the view down the road is blocked to the view of those coming out of Tract A. There is not a good view of traffic moving south. Picture E5 shows that a neighboring hedge (not part of the applicant's property) sticks out quite far and blocks the view of the road going south. This creates a risk for people who are walking in the area because there are no sidewalks. It also creates a risk to those driving down the streets because cars will be coming out of relatively blind access points.

Mr. O'Connell referred to the issue of trees. He noted that Tract A, as proposed along the north side of the property, will require the removal of significant trees which will cause some loss of rain protection. Pictures E4 and E5 identify some trees on the adjoining property. There has been no analysis prepared by the City regarding what will happen to the roots of the trees on adjoining properties if they are covered over with pavement. Or if the stormwater vault is placed under Tract A. He suggested that this would weaken the roots of trees on adjoining properties, creating a risk of wind throw that could damage adjoining properties and injure people.

Mr. O'Connell referred to the endangered species act (ESA). He recalled that one of the applicant's experts stated that Boeing Creek does not provide ideal habitat for endangered species. The Puget Sound Chinook, which has been listed as threatened this year, does not require ideal habitat for survival. The problem is that in Puget Sound they have degraded the habitat, and the challenge is to do something to prevent this species from going extinct. He said he does not recall that the expert provided any of the reports for which he claimed to be relying upon for the basis of his conclusion that this was not a Chinook habitat. If that is his conclusion, it must be established by appropriate documentation. He said more dense development on this site would create problems because of the increased use of pesticides and potential chemical spills. Allowing 12 houses would create less of a risk than the 14 houses that were originally proposed.

Mr. O'Connell referred to the comment that schools could handle capacity and the development would not adversely affect the capacity of the schools. He said he has a daughter who attends Sunset Elementary School, a son who attends Einstein Middle School, and a daughter who attends Shorewood High School. There are 34 students in his daughter's fifth grade class. That is too many. The reason he moved to Shoreline was his belief that there were good schools. Overcrowding diminishes the value of the schools. Mr. O'Connell pointed out that there has been no credible evidence submitted by the proponent as to the adequacy of the capacity of the schools that will be impacted by the development to show that they can handle the students. Also, who is going to pay for the busses to transport those excess students to other schools?

Regarding the stormwater system and Boeing Creek, Mr. O'Connell recalled that a Commissioner inquired about how other stormwater systems in the general area were designed as compared to this proposed project. He said he does not know the answer to that question, but this has been a problem in the City for quite some time. This particular development is located in the Boeing Creek basin, which happens to cover a very large area. The City is issuing permits for stormwater discharge without having a clue as to the capacity of the system to serve this development or other developments along that creek.

COMMISSIONER BRADSHAW MOVED TO EXTEND THE MEETING TO 10:00 P.M. COMMISSIONER PARKER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 8-0.

Mr. O'Connell suggested that there has been no adequate analysis of what the stormwater system can handle, and the City needs to get an idea of what the future holds for the City and its stormwater system. None of the plans address this issue. Everyone refers to the King County Stormwater Manual or the Department of Ecology Stormwater Manual, but all of these things were in place when it became necessary to list the salmon as endangered. While he cannot tell which documents are adequate or inadequate, he can say that urbanization and stormwater issues are some of the things that contribute to the decline of these species. He recommended that the project be approved for 12 lots rather than 13 so that there would be less impervious surface and less stormwater drainage.

Mr. O'Connell offered the following exhibits for the record: Exhibit 31C (Federal Regulations Volume 64, Number 56 60CFR Parts 223 and 264), Exhibit 32C (Federal Regulations Volume 63, Number 45 50CFR Parts 222, 226 and 227), Exhibit 33C (Picture of Governor Gary Locke Observing Sink Hole) and Exhibit 34C (Picture of Elected Officials Observing Sink Hole). He noted that the sinkhole cost the City an excessive amount of money to repair. He offered a document from the City of Shoreline regarding Boeing Creek and Shoreview which talks about the quality of the watershed in this area. It was identified for the record as Exhibit 35C. He also offered the City of Shoreline document regarding the Boeing Creek Environmental Program which identifies the quality of the water and fish and wildlife

in Boeing Creek. This was identified as Exhibit 36C. He offered a copy of the State's draft statewide strategy to recover salmon entitled, EXTINCTION IS NOT AN OPTION, dated January 1999, as Exhibit 37C. He particularly noted the chapter entitled, LINKING LAND USE DECISIONS which talks about how salmon recovery and land use decisions need to be interrelated.

Mr. O'Connell referred to a KOMO Television videotape segment of a news story related to the subdivision problem. Chair Kuhn noted that the people who provided their opinions on the videotape were not under oath and did not swear that their statements were true. He suggested that it is not appropriate to offer the videotape as evidence. Mr. O'Connell withdrew the video as an Exhibit.

Mr. O'Connell referred to Exhibit 30C (neighborhood pictures E6 through E10). He explained that Picture E6 was taken from 6th Avenue looking at the fence facing the Zevenbergen's property. There is at least one tree tipped sideways. He recalled that the staff has recommended that there be a soils report before the houses are constructed. Exhibit 30C illustrates that there are saturated soils and before houses can be constructed, there needs to be an adequate engineering and soils report. Mr. O'Connell said Pictures E7, E8 and E9 all show leaning trees. E10 is a view from 182nd Street looking south across the top of the house that backs against the subject property. It shows the tall trees that the group has expressed concern about. If they are cut down, the area will lose the water retention capacity. If they are too close to the property and the roots are damaged, they will be at risk of falling.

As requested by Mr. O'Connell, Chair Kuhn admitted all of the exhibits he submitted as evidence for the record.

Chair Kuhn went down the listed and invited each of the people signed up on the list to provide their testimony. Many stated that they were participants in the neighborhood group and their concerns had already been addressed.

Ginger Botham, 16334 Linden Avenue North, swore that her testimony would be true to the best of her knowledge. Ms. Botham recalled that staff recommends 12 lots rather than 13 or 14. Staff tends to be very conservative in their requirements to developers, and she suggested that to require less than the staff recommendation is unnecessary. She asked that the proposal be limited to 12 lots. She referred to the process the Commission created limiting citizen comments, and said she was disappointed. She attended the appeal hearing, and there was a water engineer in the neighborhood that was prepared to speak and did not get the opportunity. She was hoping they could hear from a non-staff professional regarding the water quality in the area. Chair Kuhn advised that the Commission did not tell this person he could not speak.

Ms. Botham said the last presentation seemed to be a lesson in imagination (i.e. imagine if this or that change were made.) She requested that when they send the recommendation to the City Council all of the "what if's" that were promised be included in the list of conditions. Ms. Botham stated that the new proposal better addresses the stormwater system, but it is still based on an old manual that King County has already updated by increasing the surface water retention requirements by about 400 percent. If the surface water system, as designed, is adequate, it will be evident when development occurs. If it is not, it will also be evident. Ms. Botham offered an outline of her oral presentation dated 7/15/99 as Exhibit 38C.

Chris Bowers, 634 Northwest 178th Place, swore that the testimony he would provide is true to the best of his knowledge. He called attention to the intersection of 180th and 6th which is manned by a safety patrol of Sunset Elementary fifth and sixth graders. A third lane at this intersection would be dangerous

to these students. He disagreed with the neighborhood group's concept of putting a sidewalk along the west side of 6th Avenue for 100 feet. It seems that this would create a situation of children walking down what they feel is a safe place and then having it drop off facing the traffic. People coming down the road will have difficulty seeing the children.

Mr. Bowers referred to Mr. Cooper's statement that the Council denied them the authority to change the size or the number of lots proposed. He said the proposed plan does not keep with the cul-de-sac character of the neighborhood. He recommended that a cul-de-sac concept be used for this subdivision, as well. Mr. Bowers agreed that the park is a primary issue for children. The size of the park seems to be proposed for a double duty: the bio-swale and a play area for children. He said it is his understanding that if it is not properly maintained, then there will be problems. Mr. Cooper clarified that Exhibit 2C shows that the bio-swale is behind the park area in the lower right corner. The swale is not calculated in the park square footage. Ms. Kaylor agreed that the park square footage does not include the swale area.

Mr. Bowers said he would like to know what the final plan is so that the public can provide comments regarding what actually will occur on the site rather than what could be done. He said there seems to be some legal issues that need to be addressed. One is regarding the size of the lots and whether that is the only determination for the look and feel of the neighborhood. The other is whether or not the vesting is legal. If there is no legal vesting, then the plan could be rejected.

Pat Peckol, 19944 8th Avenue Northwest, swore that her testimony would be true to the best of her knowledge. Ms. Peckol said she is the president of the group, Concerned Citizens for Shoreline. She recalled that she recently had the opportunity to review the applications of the various Commissioners. She found it interesting that some of the individuals were asked to serve on the Commission because they were interested in preserving the character of the neighborhoods. The staff has worked diligently to present a plan and alternative that would at least meet a compromise position. She said it would be imprudent of the Commissioners to not support their staff's recommendation. They would be sending a clear message to the community that it is easier to "rubber stamp" what a developer wants than to step aside and look at what is best for the community.

Roger Day, 1035 Northwest 166th Street, declared that his statements would be true to the best of his ability and relate to issues before both the Hearing Examiner and the Commission. He questioned if the staff has the capacity to accurately evaluate all of the statements from the developer and his witnesses as to accuracy and truth. He inquired if the figures set forth in the 100-year storm match or exceed the experience of the pond failure event. He suggested that the Commission consider this. Regarding the affect on ecology, Mr. Day said when his family moved to Shoreline in 1962, Boeing Creek was a clean stream ecosystem with healthy aquatic life, and one could safely drink water from it. No matter how hard it rained the creek did not appear to run significantly faster or fuller. He asserted the creek has deteriorated into a filthy drainage ditch and was declared dead water by the State Fisheries Department. He said he has attended many meetings in which his concerns for the Boeing Creek streambed were met with verbal assurances that streambed protection would be part of the project. He maintained the projects were built, but none of the protection measures were ever enforced. Mr. Day emphasized that he is against any project that will provide any more water volume or velocity to Boeing Creek.

COMMISSIONER PARKER MOVED TO EXTEND THE PUBLIC HEARING FOR 15 MORE MINUTES. COMMISSIONER MARX SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 8-0.

Laura Lind, 646 Northwest 178th Place, swore that her testimony would be true to the best of her knowledge. Ms. Lind said she lives two blocks north of the sinkhole. She took issue to Ms. Kaylor's statement that the proposed development's impacts would be less than significant. Also that the view would be less than significant. Ms Lind said the view is not insignificant to her. She said she is in full agreement with the neighborhood representatives. She said it matters to her that there could be the possibility of 125 more cars going along 6th Avenue. She said she has a child who walks down this street and the increase in cars will impact her family. However, the aesthetic look of the development will have the greatest impact to her. The original design seemed to be a huge proposal. The proposal presented by the neighborhood group better represents the aesthetics and character that exists in the surrounding neighborhoods. She asked that the Commission reconsider this proposal.

Ken Howe, 745 North 184th Street, swore that his testimony would be true to the best of his knowledge. Mr. Howe said he is the designated historian for the Richmond Highlands Neighborhood Association. He said he wished to add the historical nature of Northwest 180th Street into the record. He said this street is included as part of the plan for a bicycle tour of historic homes of Shoreline. The neighborhood association is currently working on and grant for this project. He entered this information as 39C (Information about Historical Character of Northwest 180th Street dated 7/15/99). Mr. Howe noted that there is a photograph of the log cabin that was the original home on the property built in 1907. On that same street is the property that is still in good condition built in 1908. Two properties to the west are homes that were developed in 1912. He concluded that this area is a significant block of the historic tour of homes.

Since there were no other people on the list who wished to participate in the public hearing, Chair Kuhn inquired regarding Ms. Kaylor's opportunity for rebuttal. Ms. Kaylor said she would prefer to provide her rebuttal at the continued hearing since it will take longer than the ten minutes remaining in the meeting. She would like to have her experts respond to some of the issues that were raised.

COMMISSIONER VADSET MOVED TO ADJOURN THE MEETING AND THEN LATER WITHDREW HIS MOTION.

COMMISSIONER VADSET MOVED TO CONTINUE THE PUBLIC HEARING. MOTION FAILED FOR LACK OF A SECOND.

COMMISSIONER MONROE MOVED TO CONTINUE THE PUBLIC HEARING TO JULY 22, 1999 AT 7:00 P.M. IN THE SHORELINE CONFERENCE CENTER BOARD ROOM. VICE CHAIR GABBERT SECONDED THE MOTION. MOTION CARRIED BY A VOTE OF 8-0.

10. ADJOURNMENT

The meeting was adjourned at 10:13 P.M.

Dan Kuhn
Chair, Planning Commission

Suzanne M. Kurnik
Clerk, Planning Commission

Attachment D

Planning Commission Minutes
July 22, 1999

These Minutes Approved
September 2, 1999

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF SPECIAL MEETING

July 22, 1999
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT
Chair Kuhn
Vice Chair Gabbert
Commissioner Vadset
Commissioner Marx
Commissioner Parker
Commissioner Bradshaw

STAFF PRESENT
Tim Stewart, Shoreline Planning & Development Services Director
Bruce Disend, City Attorney
James Holland, Senior Planner, Planning and Development Services
Daniel Bretzke, Project Engineer, Planning and Development Services

ABSENT
Commissioner Maloney (excused)
Commissioner McAuliffe (excused)
Commissioner Monroe

1. CALL TO ORDER

The special meeting was called to order at 7:00 p.m. by Chair Kuhn, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Kuhn, Vice Chair Gabbert, Commissioners, Marx, Parker, Vadset and Bradshaw. Commissioners McAuliffe and Maloney were excused. Commissioner Monroe was absent.

3. APPROVAL OF AGENDA

COMMISSIONER BRADSHAW MOVED TO REMOVE ITEM 5, PUBLIC COMMENT, FROM THE AGENDA. VICE CHAIR GABBERT SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

COMMISSIONER PARKER MOVED TO REMOVE ITEM 6, REPORTS OF THE COMMISSIONERS, FROM THE AGENDA. COMMISSIONER BRADSHAW SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

4. APPROVAL OF MINUTES

The approval of the July 15, 1999 minutes was deferred to the next meeting.

5. STAFF REPORTS

There were no staff reports scheduled on the agenda.

6. PUBLIC HEARING

a. Continued Public Hearing on the Zevenbergen Subdivision Proposal

Chair Kuhn reopened the public hearing that was continued from the July 15, 1999 meeting regarding the Zevenbergen Subdivision Proposal. He asked that those who provide testimony swear or affirm that the testimony they give is true and accurate to the best of their knowledge. For those who testified on July 15, 1999 their reaffirmation will apply to this hearing date, as well. He recalled that when the hearing was continued, the applicant was about to present a rebuttal to the testimony that had been provided. He noted that the rebuttal would be limited to matters that were brought up during the public comment portion of the hearing. No new materials would be allowed. If necessary, he stated that the public would be allowed to provide comments regarding matters brought up in the applicant's rebuttal.

Judith Bendor, Hearing Examiner, said she is supposed to issue a ruling 10 days after the close of the MDNS hearing. She noted that the City issued an MDNS for 12 lots. Tim Stewart, Director of Planning and Development Services, clarified that while the staff report recommended 12 lots, the City issued an MDNS for 14 lots. Ms. Bendor clarified that she is responsible to act upon the 14 lots that are identified in the MDNS. Bruce Disend, City Attorney, answered affirmatively.

Courtney Kaylor, 2025 First Avenue, Suite 1130, Seattle, 98121, said that since this is the applicant's opportunity for a rebuttal, she, along with Gary Cooper, Terry Gibson, and Bill Shiels, would each speak briefly. She referred to the claim raised at the last hearing that the plat is not vested because the plat map did not show a common recreation area. She said she addressed this issue in a legal memorandum, which she hoped each Commissioner received. She summarized that RCW 58.17.033 states that a preliminary plat application is vested to the law in effect when it is submitted if the application is complete. The statute contains no requirement that the plat comply with all zoning code requirements when submitted. She stated two court opinions were relevant: Friends of the Law v. King County, 123 Wn.2d 518, 869 P.2d 1056 (1994) and Association of Rural Residents v. Kitsap County, 974 P.2d 863 (1999). These cases both establish that a complete application vests a plat even if the plat does not conform to the zoning code. In Friends of the Law, the plat did not comply with lot size averaging requirements in the zoning code, but it was vested. In Association of Rural Residents, the plat allowed urban development outside an urban growth area in violation of the Growth Management Act. Nevertheless, the plat was vested. Ms. Kaylor said the Friends of the Law court stated that if a plat, as submitted, does not comply with the zoning code, then the City can condition the plat so that it does comply. This is what has occurred with the subject proposal.

Ms. Kaylor said that at the hearing the public claimed that a number of cases established principles under which the City could reduce the density of the project below 13 lots, but none of the cases support that proposition. She noted that she addressed each of the cases individually in her memorandum to the Commissioners. She summarized that these cases allow cities to impose conditions that relate to impacts that are caused by a plat, but they do not permit a reduction in density below 13. For the reasons discussed previously the plat complies with all of the applicable code requirements and has no significant adverse impacts, as conditioned.

Ms. Bendor requested clarification regarding the number of lots she should consider as part of the MDNS issue. Mr. Stewart referred to Attachment E, which is the MDNS of record which was issued July 13, 1998. It was based upon the initial application of 14 units. Ms. Bendor inquired if she should take into account the condition that was added subsequent to the MDNS, limiting the number of lots to 12. Mr. Stewart replied that conditions that occurred subsequently were in regard to the plat. He added that the original MDNS was not revised or adjusted by the staff when it was continued to the present hearing. When making a decision, the Hearing Examiner should consider the new information that has been presented. Mr. Disend inquired if the current proposal has been amended by the applicant from 14 to 13 lots. Ms. Kaylor said that it had not. However, the applicant has suggested that they would not object to a condition from the Planning Commission that would replace one of the lots with a recreation area.

Ms. Bendor said that she finds these "fine tuned" distinctions difficult to consider. There were a whole series of conditions proposed by the citizens. She must know before the end of the hearing what issues and conditions she should take into account when making her decision. Chair Kuhn agreed. He noted that the original application was for 14 lots. The staff recommendation was for 12 lots with conditions. The applicant is now saying that they can change the number to 13 lots, but this has not been done in a formal application. Mr. Disend said the application before the Hearing Examiner and Commission is for 14 lots. Ms. Bendor noted that the original application does not include a bio-swale, and the applicant has indicated that this would be an integral part of the proposal.

Ms. Kaylor said that when an application is submitted, the City staff conducts a zoning code or technical review. During that review, conditions are imposed on the plat. What the plat looks like once the conditions are incorporated might be slightly different than what was originally proposed. In this case, they originally proposed a 14-lot plat with no bio-swale. The City staff, in their review of the stormwater expert's report, suggested that a bio-swale should be included. The applicant is not objecting to that condition. Ms. Bendor said the bio-swale issue is critical to her because she must consider the water quality and quantity affects down stream. The original proposal for 14 lots is not realistic. Ms. Kaylor emphasized that as part of the MDNS process, the SEPA review would consider whether or not the plat, with conditions, would cause any significant impacts. Ms. Bendor agreed and said the conditions, even if suggested later than the original MDNS, should be part of her consideration. Mr. Disend concurred.

Chair Kuhn noted that Mr. Cooper, in his previous presentation, made reference to a number of potential or "no-objection" changes to the original application. He inquired if these conditions have been listed in writing. Ms. Kaylor said these conditions have been listed in writing in four locations. The first is the MDNS that was originally issued for the project and is attached to the staff report. The second is at the end of the staff report for the public hearing. The third is the two-page document submitted by the neighbors at the last hearing. The fourth is the memorandum she submitted to the Commission yesterday, which outlines the applicant's requested changes to the conditions listed in the MDNS and the conditions proposed by staff. This document also includes the applicant's statement of objection to or acceptance of the conditions recommended by the neighbors. Ms. Kaylor agreed that the Hearing Examiner could consider those conditions for which the applicant has expressed no objection. Mr. Disend added that if there were no objection voiced by the applicant, the City would not object, either. Ms. Bendor clarified that she is to consider the conditions listed in the memorandum. Ms. Kaylor said she would like the Hearing Examiner to identify those conditions she feels are necessary, based on the evidence, to reduce the impacts of the proposal.

Ms. Kaylor referred the Commission to the memorandum she provided which addresses each of the conditions proposed by the neighbors. She has indicated any opposition from the applicant and provided reasons for that opposition. The Commission requested that Ms. Kaylor review the memorandum with the Commission since they just received it when they arrived at the meeting. Ms. Kaylor recalled that the applicant met with the neighbors to discuss their concerns. She referred to a letter she wrote to the neighbors, which has already been entered into the record. This letter indicates which of the neighborhood conditions the applicant would not object to. She reviewed the list with the Commission.

Ms. Kaylor said the first neighborhood condition is that there be a minimum density of 12 lots plus one recreation area. As previously discussed, Ms. Kaylor said the applicant does not object to reducing the number of lots to 13, with a common recreation/play area. However, they object to a reduction in the number of lots to 12. The second neighborhood condition is that an on-site recreation area be provided in accordance with SMC 18.14.180. The applicant has no objection to this condition. The third neighborhood condition is that project approval of the stormwater system design be done in accordance with the streambank erosion standard to provide for 100-year storm retention. The applicant has no objection to this condition, but they suggest that it be worded more precisely to reflect what was included in the drainage report.

Ms. Bendor inquired if the 100-year storm detention was primarily designed for erosion control, or does it have to do more with the quantity of water and how it affects the bank. Ms. Kaylor said the 100-year storm protection requirement has to do with the flow rate exiting the site during the 100-year storm, which obviously affects the stormwater system issues related to both velocity and erosion. Ms. Kaylor pointed to a specific condition in which the applicant has agreed to limit peak rate outflow from the site to 50 percent of the predevelopment flow rate for the two-year, 24-hour storm flow. They also agree to limit the peak rate outflow from the site to the predevelopment flow rate for the 10 and 100-year, 24-hour storms. She noted that the language comes from a performance standard contained in the Department of Ecology's Stormwater Management Manual. Ms. Bendor concluded that the modifier for erosion control is not necessary.

Ms. Kaylor referred to Neighborhood Condition 4, which would require the installation of a bio-filtration swale or oil/water separator. While the applicant does not oppose this condition, Ms. Kaylor noted that in the City Engineer's memorandum (Appendix A of the staff report), he recommended using the bio-swale instead of the oil/water separator. If the neighbors and City want the oil/water separator installed, the applicant would agree to do so. Neighborhood Condition 5 would require that Tract A be moved so that the north lots of the subdivision would abut the existing lots. Ms. Kaylor said the applicant does object to this condition since it would require that the access road for the plat be completely redesigned. Redesigning the plat is unfeasible—especially since the plat design currently meets all of the code requirements.

Ms. Bendor referred to Neighborhood Condition 4, and inquired if the City would object to the addition of an oil/water separator. Mr. Bretzke, City of Shoreline Project Engineer, replied that there is confusion regarding this issue. The original report indicated a coalescing plate oil/water separator used for high intensity spill removal, and the City does not recommend this type of separator. The applicant proposes a T oil separator, which is designed to handle water from a stream. It is basically a down-turned elbow flowing into a catch basin, and the City agrees that this type of separator would be appropriate for this situation. Commissioner Bradshaw noted that the information the Commission received was that either a bio-swale or an oil/water separator could be used or that both could be used. It appeared from previous information that the bio-swale would be the best entrapment device. The oil/water separator, regardless of the type, would require maintenance. Mr. Bretzke explained that there are two types of oil/water

separators. One requires a lot of maintenance and one does not. The T separator does require yearly maintenance, but it works in conjunction with a swale. Mr. Bretzke said it is okay to have an oil/water separator in addition to a swale if the separator is the T-type. Commissioner Bradshaw inquired if it would be okay to have a swale only. Mr. Bretzke replied that the code requires both.

Ms. Bendor inquired whether the integrity of the trees along the proposed access road would be jeopardized. She recalled the citizens' comments about that specific issue, and she inquired how the applicant intends to address the concern. Ms Kaylor said there would be a five-foot landscape buffer along the northern border of Tract A that would separate the pavement from the neighbors to the north. She noted that in her letter to the neighbors, the applicant has volunteered to increase the buffer to eight feet to address the concerns related to the trees. Ms. Bendor inquired if there is any information in the record to support the applicant's claim. Ms. Kaylor asked that this question be deferred to later in the presentation.

Ms. Kaylor said Neighborhood Condition 6 would require a reduction in the area of the large lot to be somewhat commensurate with the other lots. She maintained that the purpose of this condition is to eliminate the possibility of future subdivision of the large property and to redistribute its area to increase the areas of the other lots to conform to the existing neighborhood. Ms. Kaylor said the applicant objects to this condition. The applicant desires to maintain the existing home located on the proposed large lot and a significant portion of the surrounding landscaping. She noted that the lot size would conform to the existing zoning code.

Ms. Kaylor said Neighborhood Condition 7 would allow no vehicle access onto Northwest 180th or 6th Northwest except for roads serving the proposed subdivision. Neighborhood Condition 8 would require that all roads serving the proposed subdivision be accessed internally. The applicant objects to both of these conditions for the same reason they object to Neighborhood Condition 5. She indicated that Mr. Cooper would address the issue of access later in the applicant's rebuttal. She said Neighborhood Condition 9 would require that the new homes be constructed with fronts facing onto Northwest 180th. The applicant objects to this condition. She said it is common practice to construct homes to face their driveways, and this is reflected in the orientation of the existing homes in the neighborhood. This permits the homes to be accessed directly and enhances a feeling of privacy for the homeowner. She concluded that Neighborhood Condition 8 would require a deviation from common practice and existing conditions of homes already in the area and decrease the practical and aesthetic qualities of homes in the plat. Also, Ms. Kaylor noted that Neighborhood Condition 8, in conjunction with Neighborhood Conditions 5, 7 and 9, would require homes to face away from the roads providing access to them. This type of arrangement would be impractical, contrary to common practice and contrary to the existing pattern of home placement in the community.

Ms. Bendor inquired which of the lots would have their backs to the street. Ms. Kaylor answered that the proposed plat would not require any houses to have their backs to the street. They would most likely have their sides facing the street and be oriented to face the driveway. Ms. Kaylor pointed out on a map where the consolidated driveways would be located (i.e. on the lot line between Lots 7 and 8 and between Lots 9 and 10). She noted that Mr. Cooper discussed the consolidated driveway issue previously. The entry would be on the common lot line, and the cars would turn into their garages.

Ms. Kaylor said Neighborhood Condition 10 would require that new homes be constructed with a two-story maximum and non-uniform color and design. She said the applicant has no objection to this condition, but she noted that after the homes are purchased, the individual property owners would determine subsequent modifications. In addition, she clarified that they expect the homes to have a

common architectural theme, but they would not be "cookie cutter" homes. They would not be identical.

Ms. Kaylor explained that Neighborhood Condition 11 would require a homeowner's covenant to prohibit large vehicles, such as RVs and boats, from parking off the street (Northwest 180th and 6th Northwest). She said the applicant feels it is unfair to prohibit the homeowners in the plat from parking their large vehicles while allowing their neighbors across the street to do so. Therefore, Ms. Kaylor said the applicant objects to the condition as proposed.

Ms. Kaylor referred to Neighborhood Condition 12 which would require a homeowner's agreement that would require the property owners to provide maintenance and financing for the landscaping. The applicant has no objection to the condition, but they request that it be clarified to provide that "the homeowner's association shall maintain all commonly owned areas, including landscaped areas." Ms. Bendor referred to public testimony regarding who would be responsible to maintain the bio-swale. She inquired if this issue has been addressed. Ms. Kaylor said the homeowner's association would maintain all commonly owned areas on the property. Ms. Bendor inquired if the bio-swale would be considered commonly owned. Ms. Kaylor said that, as currently proposed homeowners would maintain it. Chair Kuhn said the way he reads the proposed condition, it seems to indicate that the cost of all landscaping would be the responsibility of the homeowner. He noted that the developer would do the initial landscaping. He suggested that this be clarified. Ms. Kaylor concurred.

Regarding Neighborhood Condition 13, Ms. Kaylor said this would require that as many trees as possible be preserved and that there be compensation or replacement of all the native conifers with the largest, nursery grown evergreen available. Ms. Kaylor said the applicant does not object to the intent of this condition, but believes more specific language is required. With respect to the phrase "preservation of as many trees as possible," Ms. Kaylor said the applicant believes this is already required by the more specific conditions numbered 3A and 3B in the July 13, 1998 MDNS. With respect to replanting, Ms. Kaylor said the applicant has no objection to a condition requiring them to plant native evergreens of six feet in height along Access Tract A, 6th Avenue Northwest and Northwest 180th Street and in the recreation area. However, Ms. Kaylor said the applicant does object to the requirement that trees be greater than six feet in height because they do not generally do as well when replanted.

Chair Kuhn suggested that if they worded it to require trees no greater than six feet in height, it would allow trees less than six feet to be planted. Therefore, it should be worded "at least six feet in height." The applicant would then only be required to meet the minimum of six feet. Ms. Kaylor agreed that would be acceptable. Ms. Kaylor said that as currently proposed, the applicant agrees to replant native evergreens at a ratio of 2:1.

Ms. Kaylor said Neighborhood Condition 14 refers to non-glare street lighting requirements, and the applicant has no objection. The applicant also does not object to Neighborhood Condition 15 which would require that sidewalks, curbing, parking, landscaping and positioning of the roads at the intersection of Northwest 180th and 6th Northwest be designed with City Engineer, Daniel Bretzke. However, they do object to the condition requiring future neighborhood input and review of street improvement plans. The sidewalk and street improvements are already required by conditions 5B and 5C in the MDNS. Members of the public provided input regarding the design of these improvements at the July 15, 1999 public hearing. She said they have no objections to the layout of the street improvements as shown on the exhibit submitted at the hearing by members of the public. She commented that a condition requiring future neighborhood input and review would be inappropriate because the review to be conducted is technical in nature. She suggested that this would grant improper

veto power to the neighbors and would be inconsistent with the procedures governing the final review of engineering plans after a preliminary plat is reviewed. She said that they would submit final engineering plans to the City in accordance with the code and state law prior to requesting final plat approval.

Ms. Kaylor said Neighborhood Condition 16 would eliminate any design plans that call for the addition of a right turn lane or a widening of the current public roads which would attract even more traffic to the area. The applicant has no objection to this condition. The applicant does not object to Neighborhood Condition 17, either. This would require sidewalks as off-site mitigation for traffic impacts associated with the development. She noted that sidewalks and other street improvements are already required by Conditions 5B and 5C in the July 13, 1998 MDNS.

Regarding Neighborhood Condition 18, Ms. Kaylor said the applicant has no objection to the placement of signs along Northwest 180th stating "20 mph when children are present" or "fines doubled for infractions." They do not object to the placement of a sign along 6th Northwest stating "25 mph". However, they do object to bearing the cost of installation for a blinking light at 6th Northwest because the safety problem the light is designed to address exists presently, if at all, and will not be significantly increased by traffic resulting from the plat. For this reason, she suggested that the requirement of a blinking light would not be reasonably related and proportional to the impacts of the plat.

Ms. Kaylor said Neighborhood Condition 19 would require that all final engineering plans be submitted for neighborhood review and be approved by the City Council prior to site development. It would also require that all construction plans and site development permits be approved. Ms. Kaylor referred to her outline of the procedure for plat approval. The applicant objects to conditions requiring a deviation from this procedure. In particular, Ms. Kaylor said the applicant objects to a condition requiring (1) review of engineering plans by the neighborhood; (2) City Council approval of final engineering plans independent of final plat approval; (3) City Council approval prior to construction of site improvements; (4) "construction plan" or "site development permit" approval prior to site development. She noted that all of these requirements would be inconsistent with the City Code and State law.

Ms. Kaylor said the applicant has no objection to Neighborhood Condition 20 requiring the applicant to submit rain, erosion and sedimentation control plans to minimize transport of sediment to adjacent properties during construction. She noted that the plan referenced in this condition is typically called a "temporary erosion and sedimentation control plan" and would be required by the City even absent of an expressed condition. She said the applicant objects to Neighborhood Condition 21 that would require that no site construction could begin before the month of March. She said this condition would preclude construction during the dry months of the year without justification. It also unfairly imposes conditions on development of the plat that do not apply to other construction activities with equal or greater impacts.

Ms. Kaylor referenced the issue of community character. She said the applicant maintains the legal position that has been discussed at length. She emphasized that their position is not only based on legal argument, it is also based on a firm belief that the plat is consistent with the characteristics of the surrounding community. Ms. Bendor inquired of the City Attorney if it would be advisable for her to address any alternative other than 14 and 12 lots. Mr. Disend suggested this would be helpful and constructive.

Gary Cooper referenced the issue of neighborhood and community characteristics. He referenced Exhibit 40C (10 oversized pictures of homes reflecting existing neighborhood character). He identified the plat location. He said the intent of the pictures is to show examples of multi-level homes in the

surrounding areas that have direct street access. He noted that many of the houses in the area were built between 1960 and 1980. He said that not all of the lots have tall, large evergreen trees. They have shrubbery and landscaping, and are very nice. The houses built on the subject property would be two stories high with a 90's look to them. They would have different facades and elevations, and would not all be painted the same, etc. There will be variation. Each of the houses will be fully landscaped, and the types of landscaping can be discussed with the City. He referred the Commission to Exhibit 41C, which is an oversized, marked assessors map. He noted the areas where landscaping would be provided.

Regarding the access issue, Mr. Cooper referenced Exhibit 40C, which indicates in yellow all of the homes that access directly onto the street. Directly across the street from the property going south, all of the homes access directly from the street. The proposed plat would have consolidated access that would require fewer curb cuts than the existing homes have. Ms. Bendor recalled that in a previous presentation, Mr. Cooper indicated that there would be individual turn around areas on each lot. Mr. Cooper referred to Exhibit 3C, and clarified that there would be two access points to service four homes, which is less than currently exists across the street. In another location on the plat, there would be two access points to service nine homes. The neighbor's design would only allow one access for the entire plat. The applicant feels that the four access points would be in character with the neighborhood and would meet all of the City code requirements.

Mr. Cooper said that if the City were to require it, the applicant could provide a hammerhead turn around area in front of each lot. This would provide a safer access than the existing lots across the street. Ms. Bendor clarified that the applicant would agree to the turn around condition if required. Mr. Cooper said the applicant could accept that as a condition for approval.

To address the issue of trees and their drip line, Mr. Cooper referred to Exhibit 3C. He noted that Tract A has a landscape area (located at the north end), and the neighbors have expressed concern about the trees on adjacent properties being damaged because their drip line extends out into the landscaped area (about 10 feet at most). The applicant has increased the width of the landscape area to 8 feet to help protect the trees, and would be more than willing to plant trees at a ratio of 2:1 in that area, also. Ms. Bendor questioned regarding the integrity of the trees on adjacent properties. Mr. Cooper said the applicant's arborist has indicated that the roots of trees normally extend out to the drip line of the tree. If the area inside the drip line is undisturbed, the chances of damage to the tree are minimal. Mr. Cooper suggested that one condition could be that an arborist inspects the trees during construction. If the arborist identifies that a tree would be damaged, the applicant would replace that tree 2:1.

Ms. Bendor said she assumes that the applicant would be removing the existing trees in the 8-foot landscape area. She inquired how many existing trees would be removed, and questioned the overall integrity of the adjacent trees beyond the construction. Mr. Cooper said that along Tract A there would be about seven trees removed. He also said that near Lots 12, 13 and 14 and Lots 7, 8, and 9 there are also trees that would be removed. Of the trees that are along the proposed northern access, Ms. Bendor inquired how many the applicant proposes to remove. Mr. Cooper said that all of the trees from the street point of the entrance of Tract A to the end of Tract A will be removed (about 12). Ms. Bendor inquired if the applicant has any professional view as to whether the removal of these trees would have any adverse affect to the properties to the north. Mr. Cooper suggested that a later witness for the applicant would answer Ms. Bendor's concern. He summarized that the applicant has agreed to change the landscape area to 8 feet wide instead of five. If 12 trees were removed, they would be replaced with 24 trees of at least six feet in height. The applicant could also replace all of the trees that are deemed to be damaged on the adjacent properties on a 2:1 basis.

Mr. Cooper pointed out that the homes identified in yellow on Exhibit 41C have hammerhead turn around areas with direct access to the street.

Bill Shiels, Talaesea Consultants, 15020 Bear Creek Road, Woodinville, 98172, further addressed the issue of trees. He added that the arborist he has worked with on various projects has indicated that normally if 2/3 of the root mass remains the trees will survive. The maximum drip line for any of the trees off the north side of the parcel would be 10 feet. With an 8-foot wide planting strip, there would only be a need to trim the roots by two feet, at the most. Therefore, more than 2/3 of the root mass would remain. He said he believes that none of the trees would be sacrificed in that regard. However, he recommended that proper care be taken during excavation to trim the roots cleanly so that fungus does not attack the trees. He noted that is a standard arborist practice.

Ms. Bendor noted that Mr. Cooper has indicated that if the drip line of a tree falls outside of the landscaped area, the applicant would replace the tree 2:1. Mr. Shiels has indicated that as long as no more than two-thirds of a tree's roots have been disturbed, the tree would survive. Ms. Kaylor testified that there would be no significant impacts on the trees because experience shows that with retention of two-thirds of the root mass a tree will survive. However, as a back up performance standard, the applicant would not object to a requirement that a licensed arborist inspect trees on adjacent properties to insure that no significant damage occurs. If the arborist indicates that trees are being harmed, the applicant would be willing to replace the trees 2:1.

Ms. Bendor noted that the testimony provided by Mr. Shiels is hearsay from an arborist that is not present. She concluded that they don't want to restrict the inspection to only during construction because damage could show up after construction has been completed. She suggested that the applicant consider modifying the condition. Ms. Kaylor said they would agree to plant two trees for every tree in which the drip line is encroached upon by any amount. Chair Kuhn noted that the City already requires that a licensed arborist inspect the trees prior to and during construction. Mr. Cooper indicated that the applicant would not object to the condition that during the review of the engineering plans, an arborist write a report based on all of the trees adjacent to the north end of the property.

Mr. Shiels referred to the issue of trees being blown down. He said he has not personally inspected the trees along the north side of the property, but there are ways to deal with the blow down issue. This always occurs to some extent when there is clear-cut tree removal. The extent of the problem would depend upon the density of the trees to be removed from the project site and the degree of protection the trees have afforded to the trees off site. The arborist could address this issue, as well. A condition could be that if the arborist determined that removal of the trees for Tract A would imperil the survival of the trees to the north of the property, some amount of thinning could be done. Mr. Shiels suggested that if a tree does die, it could be topped and remain as a snag that would support a variety of nesting animals. New trees could be planted in addition to that tree.

Ms. Bendor referred to the applicant's offer to have an inspection of the trees at some particular point. Chair Kuhn clarified that the applicant has indicated that they do not have an objection to an arborist doing an inspection and report prior to the commencement of construction regarding the intended construction's impact on the trees abutting the north end of the proposed Tract A. Mr. Cooper concurred. Ms. Bendor inquired if the City would act upon this report. Chair Kuhn said he assumes that, depending upon the arborist's report, the City would require the replacement of trees 2:1 if the construction encroaches upon the drip line. Mr. Cooper said this could be done during the review of the final engineering plans so that the City would have the chance to comment and place conditions upon the project. Ms. Bendor inquired if the replacement of trees 2:1 would be contingent upon the arborist's

report. Chair Kuhn said he assumes that the arborist's inspection would identify areas where the drip line would overlap with the proposed construction. The City could then require, as a condition for approval of the final application, that the trees that are encroached upon be replaced 2:1. Commissioner Bradshaw clarified that the tree that are encroached upon do not necessarily have to be removed. However, two trees would be added to compensate for the encroachment. Commissioner Marx suggested that if the arborist identifies that the removal of certain trees would subject trees on adjoining properties to the possibility of being blow down, the City could impose upon the developers to pay for the treatment of those trees. Ms. Bendor questioned what the remedy to this situation would be. Chair Kuhn recalled Mr. Shiels' testimony that windowing or vertical thinning could be done so that the wind could pass through and lessen the wind resistance. However, that would be predicated upon the owners of the trees agreeing to have that work done.

Mr. Shiels recalled that at the last hearing, Mr. O'Connell made some statements regarding the effects of urbanization on salmon recovery. He cited a chapter in the State Salmon Recovery Plan entitled "Linking Earth Land Use Decisions to Salmon Recovery." He agreed with Mr. O'Connell that the affects of urbanization could be seen throughout the Northwest in all stocks and species of salmon. This has to do with water quality and the affect of stormwater runoff on the peak and base flow of streams. Mr. O'Connell's concern is valid, and that is why the Department of Fish and Wildlife has made such stringent requirements for storm water. Prior to any development in the northwest, approximately 40 percent of the rainfall that fell never reached the ground. That is because of the mature, old growth forest that existed at the time. The method the Department of Fish and Wildlife uses to compute the amount of detention required today is that runoff rates from the land must be half of the predevelopment conditions. They are cognizant of the damage that peak flows can generate in the stream, particularly with a steep grade stream like Boeing Creek. An important aspect of this project is that it makes up for past oversights and actually attempts to "turn back the clock." Every new project that comes on line is treating its own property and other properties so that the long-term cumulative effect is that they will get back to a predevelopment condition. He added that it is not just urban runoff that affects Chinook Salmon. There is a high seas interception of Chinook, quarry catch and over fishing, hydroelectric projects, etc.

Regarding the water quality aspect of this project, Mr. Shiels suggested that the City is right in step with the State Department of Ecology and the Department of Fisheries with respect to treatment. Bio-filtration and the oil/water separator are not something that all municipalities require. Some just require bio-filtration and standard catch basins. He explained that the runoff from this site would first go into a catch basin where the sediment material drops out. An oil/water separator then captures the oil, and as the oil floats to the surface bacteria chew it on. If it stays there long enough, it disappears (biological treatment). The bio-swale would do an additional job of filtering that water. Ms. Bendor asked Mr. Shiels to turn to the exhibit showing the bio-swale. She said that it appears that the oil/water separator would be used before the water gets to the bio-swale. Mr. Shiels clarified that water from paved surface would go to an oil/water separator, which is a catch basin that separates the settleables from the flowables. The water would then go out to a bio-filtration swale. All ground water would be treated.

Mr. Shiels said that with respect to stormwater retention and treatment, this project meets the most stringent standards that the State Department of Fisheries and the State Department of Ecology are proposing.

Mr. Shiels said there was a comment raised by the neighbors regarding the potential of Chinook Salmon in Boeing Creek. Mr. Shiels said Mr. Doug Hennick, a habitat biologist for the Department of Fish and Wildlife, has responded that historically, it is not known that Chinook Salmon have ever occurred in

Boeing Creek. The Coho and Chum Salmon utilize the Boeing Creek system. Two things that prevent Chinook Salmon from utilizing small streams is its large size and its run timing. It usually returns to its native stream in mid-September when the base flow of the streams are at their lowest. Because of these two facts, there is no potential for Boeing Creek to become a run for Chinook Salmon. Therefore, he concluded that this is not a Chinook Salmon stream. However, he added that the design of the stormwater for this project has been cognizant of the need to protect water quality for all aquatic life and salmonids. If the Chinook happen to use that stream, they would benefit from the proposed design.

Terry Gibson, Gibson Traffic Consultants, 1712 Pacific, Suite 100, Everett, 98201, clarified the third traffic lane issue. His prior testimony was that the applicant proposes to improve Northwest 6th Avenue and 180th Northwest under the City standards provided by staff. He testified that if the third lane is going to be provided on 180th at the intersection with 6th Avenue, the best use of that lane would be a right turn lane, a through left and a west bound lane. He said he works for a lot of school districts, and there has been a lot of concern expressed about pedestrian safety. The proposed design by the neighbors (Exhibit 27C) is a better plan, but he was merely stating that if the City decided to stripe that for three lanes, it would be best for a right turn lane. He also said he strongly believes that making the crosswalk shorter is a better design.

Mr. Gibson said there was a comment about why the traffic consultants did their peak traffic count in the late afternoon instead of when parents were dropping off or picking up their children. He said this is a residential development project. He said he has done over 1,000 development type studies, and 95 percent of them have been done during the p.m. peak hours of 4:00 to 6:00 p.m. This peak hour is, typically, the worst-case traffic period. He noted that the p.m. peak traffic volumes are almost 10 percent of daily traffic no matter where you are at in the City, State or Country. He said he could get a handle on daily traffic volumes by counting the peak period. On 6th Avenue the traffic volume is estimated at 600 daily vehicles. There were 255 cars for the p.m. peak count for 180th Street. Therefore, they estimate a daily vehicle count of about 2,500.

Concerning visibility from Tract A (the project's primary access) onto 6th Avenue, Mr. Gibson said the traffic study (dated May 12, 1999, Appendix 2 to the staff report) includes photographs to illustrate the view looking either to the left or to the right. The view to the right is completely clear all the way to the four-way stop at 180th Street. To the left there is a row of evergreens. He attempted to simulate the conditions that would exist with the proposed improvements. He concluded that a person in a car could see to the left approximately two blocks, which is more than adequate site distance to allow a safe turn from this property.

Mr. Gibson said the applicant agrees with the neighbor's design to bulb the west leg of the crosswalk at the four-way stop, which would be safer. The project would only increase traffic on 180th Street by one percent, while 6th Avenue would be increased by 15 percent. The total traffic count for 180th would be about 685 cars per day and the capacity is about 10,000 per day. The increase would be less than 10 percent of the capacity of that road. Their conclusion does not change. The project would not have a significant impact on the vehicular traffic and safety on the road system. Ms. Bendor inquired if the only change the applicant is proposing is the bulbing at the intersection. Mr. Gibson said the only change would be to bulb the intersection and shorten the crosswalk by about eight feet.

The Commission went off record for a break at 8:28 p.m. They went back on record at 8:37 p.m.

Ms. Kaylor said the applicant's presentation during the public hearing has shown that the plat not only meets all of the City code requirements, but also goes above and beyond to address concerns that have

been raised by the neighbors and to address environmental issues. For this reason, the applicant requests that the Commission recommend approval of the plat with the conditions as discussed. In addition, the evidence that has been presented at the hearing shows that the plat, with these conditions, would have no adverse environmental impacts. For this reason, the applicant requests that the Hearing Examiner recommend issuance of a modified MDNS with the conditions that have been discussed during the hearing.

Catherine Shaffer, 17522 6th Avenue Northwest, referred to Ms. Kaylor's memorandum. The public strongly disagrees with the applicant's position that the project is vested, and they don't believe the Commission has the legal authority to put forth that proposition. The case law and statutes the applicant cited specifically require that the proposal be in compliance with the zoning code at the time that it is submitted. She pointed to Ms. Kaylor's brief which contains the applicable law (Page 2, second full paragraph). Ms. Kaylor states that the judicially created doctrine provides that developers must file a building permit application that is sufficiently complete and complies with existing zoning ordinances and building codes. That language is echoed in the existing statute cited by Ms. Kaylor (RCW 58.17.033) which states that "a proposed division of land shall be considered under the subdivision or short subdivision ordinance, and zoning and 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." Ms. Shaffer noted that Ms. Kaylor has cited two cases, and neither one stands contrary to the statute she just pointed out to the Commission.

Ms. Shaffer said Ms. Kaylor cites a Washington Supreme Court decision called Friends of the Law v. King County. She notes that there was a county ordinance that was vague and the applicant attempted in good faith to comply. The court concluded that, under those circumstances, the applicant vested. However, in this case, Ms. Shaffer stated there is a zoning code provision that is crystal clear on its face. No one has any trouble interpreting the provision. She said the applicant didn't have any trouble following it when the neighbors raised the issue before the Hearing Examiner because the applicant redesigned their project to include a recreation area. Their project was illegal when they proposed it and it did not vest. They have not provided any case law or local ordinance that would support its vesting. The Commission could approve the project as proposed with the staff and neighbor's conditions. If any variance is necessary for the minimum 7,200 square foot lot requirement, the public would not have a problem with that. But, the applicant does not have the right to build under the application that they initially submitted, and they have not provided evidence otherwise.

Ms. Bendor inquired if Ms. Shaffer is suggesting that if the project vests according to the neighbor's theory, then they would need a variance. Ms. Shaffer said the neighbors believe that the 7,200 minimum lot size emergency ordinance would apply to this property. Even under the neighbor's proposed design they do not believe that all of the lots would be 7,200 square feet. They agree that if a variance is required to meet the plan proposed by the neighbors, the neighbors would be in support of the variance.

Ms. Shaffer referred to the issue of public interest. She noted that Ms. Kaylor has indicated that the applicant has the right to build 13 units on the subject property. The City Attorney has provided a brief summarizing the cases she cited during her previous testimony and the cases that were provided to the previous hearing examiner. He has stated that the neighbors have accurately represented the law, and the applicant has not disagreed. The law says that the City can impose conditions to deal with the direct impacts of a proposed subdivision and to deal with the SEPA impacts. The City is entitled to impose additional conditions for specific impacts that have been identified such as:

- Multiple driveways coming out into the street that would otherwise not be there.

- Increased number of people living in the subdivision and sending their kids to the local schools and driving their cars to and from work every day.
- Impact of Tract A to the existing trees. The neighbors vehemently disagree with the suggestion that only 12 trees would be effected. They don't see any reason why there has to be an impact to these trees, and they don't know what the exact impact would be.
- The neighborhood is designed differently than the proposed subdivision.

Ms. Shaffer said the conditions that have been identified would address the impacts and are reasonable. They address what the Commission must do to comply with the public interest statute.

Ms. Shaffer referred to Mr. Cooper's Exhibit 40C. She said that even though she lives in the area, she has trouble recognizing the houses in the photographs. One reason is that the photographs miss the large trees on the property. Knowing the neighborhood as she does, there are large trees on all of the surrounding properties that are not identified in the photographs. She added that Mr. Cooper has pointed out that in the areas of yellow, the houses have driveways that access the street. But, she pointed out the large difference in square footage and turn around space on those properties compared to the proposed lots. Ms. Shaffer said the design of the proposed subdivision is not anything like the character of the existing neighborhood.

Ms. Shaffer said the applicant has discussed how the designs are the very best for water management and animal protection. She agreed that the applicant has made some significant improvements to their proposal. These changes were a result of the public's input, and the applicant is finally starting to comply with the codes and regulations related to the play area, the bio-swale, adequate surface water management and preservation of the neighborhood. The neighbors do not feel this would have happened if they had not appealed. She suggested that the City staff has had the opportunity to look carefully at the proposal and has provided a very positive response. The neighbors applaud their recommendation and agree that the applicant has failed, thus far, in terms of neighborhood compatibility, play areas and stormwater quality by proposing 13 lots rather than12. The neighbors feel that 12 lots is appropriate as recommended by staff. They recommend that the Commission require a redesign of the proposal with inclusion of the neighbor's 21 proposed conditions and incorporate all of the City's recommendations and existing MDNS conditions, as well. That would allow the Commission to know exactly what they are voting on. The Commission should require a final list of conditions from the applicant for review prior to voting on the matter. She said she does not believe the Commission can approve conditions that are not presented in writing. A final design of the project would clarify all of the proposed conditions.

Ms. Shaffer said the neighbors have stated that they will live with the consequences of this development (loss of trees, stormwater consequences, change in the look of the neighborhood, traffic, etc.) They have worked hard to come up with conditions that would make this development as livable as possible. They have provided substantial reasons for every condition they propose and they believe they are reasonable.

Chair Kuhn indicated that there are five people who have signed up to speak. Their testimony should be in response to the applicant's rebuttal, only.

Matthew Iglesias, 617 Northwest 182nd Street, swore that the testimony he would provide would be the truth according to the best of his ability. He said he is very concerned about the trees since he lives along the north side of the proposed Tract A. He said he is not clear as to what trees would be taken out. His house is very close to some tall trees. If there is clearing, it is possible that these trees would fall onto his home.

Victoria Tyler, 18012 4th Avenue Northwest, affirmed that her testimony would be true. She said she is very concerned about the number of homes that are proposed and the safety of the children. They have considerable traffic and high speeds along these streets. The project will have a definite impact on the community, and she is concerned about the trees, water, etc. The project would be detrimental to the neighboring properties and to the community at large. Ms. Tyler noted that the home identified as 422 Northwest 188th on Exhibit 40C is actually on Northwest 180th.

Chris Bowers, 634 Northwest 178th Place, swore to tell the truth. He said there seems to be quite a lot of concern regarding the issue of vesting. He commented that the look and feel of the neighborhood is not limited to the square footage of land. It has to do with the proportion of land that is covered by the house. The proposed sites are out of character with the surrounding neighborhood not because of the 5,000 square foot lot size but because of the size of homes that will be built. Mr. Bowers recalled that the applicant's attorney previously indicated that there needs to be give and take related to the issue of character of the neighborhood. He said it seems the applicant has taken without a lot of giving. He suggested that a more appropriate look and feel for the neighborhood would be what is adjacent to the plots both across the street the common boundaries of the property. They should review the lot size, the size of homes, the amount of land to absorb water and the conditions that surround the subject property.

Herb Alben, 124 Northwest 177th Street, testified that his comments would be true. He said he is in support of the project. He emphasized that he is in support of growth management, which this project also supports. He said he uses the wilderness areas tremendously, and he grew up in a rural area. This project is the proper density. He said he lives on a larger lot, but he does not feel it is appropriate to demand that every neighborhood have larger lots. The neighbor's attorney is misrepresenting the issues. He said he does not feel the builder has tried to undermine or "trick" people in order to develop a bad project. All of the things they have offered have been in good faith. It is a free enterprise system and the applicant could make 14 lots in accordance with the law. They have reduced their proposal down to 13 lots. He suggested that the addition of four driveways would be minor.

Jane Cho said she spoke previously in the hearing. She recalled that the neighbors submitted three alternative designs that she and her husband worked hard to create with input from Daniel Bretzke. They eliminate the driveways coming out into the street. She asked that the Commission consider their preferred design which they feel is more compatible with the existing neighborhood. She also reminded the Commission that the City staff did recommend 12 homes for this lot.

PUBLIC TESTIMONY WAS CLOSED.

The Commission discussed how they would proceed with deliberations. Vice Chair Gabbert suggested that the Commission needs an opportunity to review all of the information that has been provided during the public hearing, along with the information that was included in the record from the last hearing

VICE CHAIR GABBERT MOVED TO ADJOURN THE PUBLIC HEARING TO THE NEXT MEETING TO ALLOW THE COMMISSION THE OPPORTUNITY TO CONSIDER ALL OF THE INFORMATION THAT HAS BEEN PROVIDED. MOTION DIED FOR LACK OF A SECOND.

COMMISSIONER BRADSHAW MOVED THAT THE COMMISSION CONTINUE DELIBERATIONS AND MAKE A DECISION AT THIS MEETING. COMMISSIONER PARKER SECONDED THE MOTION.

Commissioner Parker noted that while there appears to be a significant amount of information for the Commission to consider, much of it has already been provided to the Commission. He said he is ready to begin deliberations. Commissioner Bradshaw and Commissioner Vadset both indicated that they were also ready to begin deliberations. Commissioner Marx said she would like the opportunity to review the information, but she would like the Commission to reconvene before July 29. Chair Kuhn said he does not envision the Commission meeting again before July 29. Mr. Stewart reviewed the schedule for the meeting on July 29, 1999. He noted that there is a conflict between the Planning Academy meeting and the Commission Meeting. He reminded the Commission that originally scheduled on the 29th was a presentation by Makers, the City's architect and urban design consultant, regarding commercial design standards in conjunction with the Planning Academy. The staff had then hoped to convene the review of the planning and development code at approximately 8:15 p.m. If the Commission desires, they could separate the Planning Academy into their own meeting and use the first part of that meeting to take administrative action on the subdivision matter.

Commissioner Vadset suggested that the Commission owes it to the applicant to come up with a definitive decision sometime this evening. Chair Kuhn emphasized that the Commission owes it to everyone to make a fully informed, reasoned decision. He reminded the Commission of Commissioner Bradshaw's motion that the Commission proceed with the deliberations and make a decision.

COMMISSIONER BRADSHAW'S MOTION FAILED 3-3

VICE CHAIR GABBERT MOVED THAT THE COMMISSION RECESS FOR 15 MINUTES TO ALLOW THE COMMISSIONERS TO REVIEW THE MATERIALS AND THEN PROCEED WITH DELIBERATIONS. COMMISSIONER MARX SECONDED THE MOTION. MOTION PASSED BY A VOTE OF 5-0, WITH COMMISSIONER PARKER ABSTAINING.

The Commission recessed at 9:12 p.m. and reconvened at 9:27 p.m.

COMMISSIONER PARKER MOVED TO CONTINUE THE MEETING TO 10:00 P.M. COMMISSIONER BRADSHAW SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY, BY A VOTE OF 6-0.

VICE CHAIR GABBERT MOVED TO ACCEPT THE STAFF RECOMMENDATION FOR THE ZEVENBERGEN SUBDIVISION PROPOSAL. COMMISSIONER VADSET SECONDED THE MOTION.

Commissioner Bradshaw pointed out that the applicant has a right to build 14 lots. The property is zoned for six units per acre, and 2.4 acres would allow 14.4 units. The City's minimum square foot requirement by law is 5,000 per lot. Each of the proposed lots would exceed 5,000 square feet. In the past, the City staff has advised the Commission that the City may round lots up a reasonable amount when they are less than 5,000 square feet. He suggested that neighborhood character and community character are terms that are not clearly defined by law and are subject to interpretation. The opponents define character as to density and the number of driveways accessing trafficked streets. Other definitions of character may include the value of houses built, single-family detached versus multi-family homes, curvilinear versus grid patterned streets, native vegetation versus landscaped vegetation, underground versus above ground wiring, etc. He said the proposed subdivision is compatible with the character of the community in the following ways:

1. The lot size conforms to City of Shoreline law.

2. The houses will be single-family detached.
3. The value of the homes to be built will be equal to or exceed the median value of the homes in the neighborhood.
4. Approximately 50 percent of the homes in the neighborhood are located on cul-de-sacs and 50 percent have driveways that enter trafficked streets. The proposal, as originally designed, has driveways for eight lots, and about 50 percent will not access the trafficked street.
5. The subdivision will be designed with a better stormwater retention system than the majority of other subdivisions in the neighborhood.
6. The neighborhood has above ground wiring, as will this subdivision.
7. The subdivision has been designed to preserve the natural vegetation as have other subdivisions in the neighborhood.
8. The Commission relies on the staff's expertise to issue the MDNS correctly. No facts have been presented to allow the Commission to reject the MDNS as issued.
9. The proposed subdivision will amply address stormwater retention. Expert reports state that there will be less stormwater flowing off the property after built than what currently exists. The opponents have given no evidence that this will not be the case with 14 homes instead of the 12 they propose.
10. Stormwater retention will be improved. There has been public testimony that the stormwater runoff is worse than it was years ago. It is evident that dozens of existing homes discharge water that negatively impact downstream homes and Boeing Creek. The experts have testified that the retention system planned for the subdivision will discharge less runoff than is currently the case for the subject property. The reduced discharge may improve, but is unlikely to negatively impact, the habitat potential at Boeing Creek.
11. Testimony has been presented by the applicant stating that he has talked with school officials. They say the school staff and building are adequate to handle the increased number of students generated by this plat as designed.
12. The safety of the children will not be compromised. Historic facts indicate that children safely walk neighborhoods where the driveways of all homes enter the trafficked streets. No facts have been presented to support that such driveways are against the public interest. No statistics have been presented to show that the applicant's design would endanger children.

Commissioner Bradshaw continued by stating that the proposal would serve the public interest in the following ways:

1. The requirements of the Growth Management Act place a requirement upon Shoreline to make it in the public interest to develop the maximum number of lots allowed by law at the time of vesting.
2. The homes to be built would more likely to be developed to a better quality than the existing homes in the neighborhood. They would be built with the latest technology and according to the current building codes.
3. Due to the stormwater retention, the subdivision would reduce the impact of stormwater on Boeing Creek.
4. The subdivision would have curbs and sidewalks which are safer to walk on than the unpaved margins of the trafficked streets that exist throughout the neighborhood.
5. The applicant has voluntarily donated one lot to be dedicated as a public park, reducing the number of lots to be developed to 13. It is in the public interest to increase parkland available to the public.

Commissioner Bradshaw said the proposal also addresses the following other issues:

1. City staff accepted a complete application. The staff has processed that application. The Commission and the Hearing Examiner have relied on the staff's determination. Tim Stewart, the Planning Director, testified before the Commission on November 11, 1998 that the application was vested. Until the staff or a court of law tells the Commission otherwise, they must process this as vested.
2. There was a question regarding how to calculate the open space requirements for the proposed plat. This is a question for the court to decide. The City staff has determined that the 14-lot plat requires a 20' x 20' recreation area, which the applicant provided. He noted that because of the applicant's proposal to donate one lot as a public park, the question appears to be moot.
3. Resident agreements do not guarantee compliance. Historic facts indicate that such agreements are kept only to the extent that homeowners want to keep them. City enforcement tends to be minimal to non-existent. It appears to be wiser to build a good, passive system that would accomplish the goal.

Commissioner Bradshaw said he has reviewed the conditions recommended by the City staff and the citizens, but would reserve comment until later.

Commissioner Marx said she has some conditions that should be added such as having an arborist review the property, etc. Commissioner Parker suggested that the Commission review the staff recommendation. Commissioner Vadset suggested that the legal memorandum prepared by Ms. Kaylor where she discussed the points of the staff and neighborhood conditions is a good list to work from. Chair Kuhn agreed and recommended that the Commission indicate which recommendations they are modifying and upon what basis. They could recommend that staff come up with findings and conclusions to support their decision.

Commissioner Marx again stated that she would like to require that an arborist review the trees along Tract A and the neighboring properties and provide a report prior to the final plat approval. If the arborist recommends that the trees on neighboring lots be treated to minimize blow down, the developer should provide this service. The developer would pay the arborist, also.

Vice Chair Gabbert reminded the Commission of his motion to accept the staff recommendation and suggested the they move forward with any amendments they want to add. Commissioner Bradshaw said that his understanding is that the applicant has accepted the following staff conditions:

- Staff Condition 4—Tract will have a minimum width of 32 feet
- Staff Condition 5—Tract A will become a public street.
- Staff Condition 6—Tract A will be built to King County Standards.
- Staff Condition 7—Each site will have a minimum of four on-site parking spaces
- Staff Condition 8—A traffic control plan must be submitted
- Staff Condition 9—The vehicle turn around must be increased by five feet
- Staff Condition 10—The watering System must be resized.
- Staff Condition 11—The common recreation areas be maintained as a commonly-owned facility
- Staff Condition 12—The depth of the stormwater facilities must be increased.

COMMISSIONER BRADSHAW MOVED TO AMEND THE MAIN MOTION TO INCLUDE STAFF CONDITIONS 4 THROUGH 12, AS WRITTEN. VICE CHAIR GABBERT AGREED TO AMEND

HIS MOTION AND COMMISSIONER VADSET, WHO SECONDED THE MOTION, CONCURRED.

Commissioner Parker inquired if the staff would agree with any of the provisions the applicant and the neighborhood have agreed to. Mr. Stewart indicated that staff would agree to adding any conditions agreed to by both the applicant and the neighborhood.

Commissioner Parker commended both parties on an effort to reach a compromise. This is a very difficult situation caused by the laws and the peculiar circumstance of the subdivision in this neighborhood. He recalled a comment made by the public that there are more people in the area than the land now currently allows. The County and state government have set provisions that have resulted in the 12-lot minimum density. The issue of neighborhood character is what hung him up during the original review of this matter and it was based, primarily, on the statistical analysis of the lot sizes. However, it has become apparent to him that that alone is not enough. The case law is clear that what constitutes an acceptable density as a condition of neighborhood character is defined by the zoning ordinance, itself, and not his opinion of the ordinance or statistics. Neighborhood character cannot be argued on the basis of lot size.

Commissioner Parker said he visited the site, and this particular tract of land contributes enormously to the character of the neighborhood. To change it at all will damage or change the character of the neighborhood. Unfortunately, that is not sufficient reason to vote against it. The law entitles the owner to build between 12 to 14 units on that property, and he agreed that the applicant should be able to build on the property.

Commissioner Parker pointed out that the staff and the Hearing Examiner have advised that the proposal is vested, and the testimony that has been provided would not contradict their determination. Therefore, he assumes that it is vested.

Commissioner Parker referred to the memorandum from Ms. Kaylor and suggested that the conditions that both the applicant and the neighbors agree upon should be added to the conditions the City has already stipulated. He next referred to the neighborhood conditions for which the applicant does not agree. He said he disagrees with Neighborhood Condition 1, which would allow only 12 lots. He did not think one lot would make a difference in terms of impact and the condition would levy an unnecessary burden on the applicant. A landowner has a right to reap economic benefit from development. Commissioner Parker said he also agrees with the applicant regarding Neighborhood Condition 5. He said there is no compelling evidence made that the lay out does not conformance with the neighborhood. He said he agrees with the applicant regarding Neighborhood Condition 6 relating to a reduction in the size of the large lot. He also agrees with the applicant regarding Neighborhood Conditions 7 and 8 and 9. Regarding Neighborhood Condition 13, Commissioner Parker agreed with Commissioner Marx' recommendation to require an arborist's report.

Commissioner Parker said he agrees with the neighborhood regarding Neighborhood Condition 15. The neighborhood should have input into the street improvement plans. He noted that this would not place an unnecessary burden on the applicant. This input and review would not be veto power, but it would allow the neighbors to work with the applicant. Regarding Neighborhood Condition 18, Commissioner Parker said he also agrees with the neighborhood. The blinking light may be a significant expense, but he felt that at some point they will have to control the speed.

Commissioner Parker said he agrees with the applicant regarding Neighborhood Condition 19. He did not think there were proper laws in place to create a situation where the neighborhood would have the right to review and approve a detailed and final plan. That is beyond the scope of the law and would probably be illegal. He also agrees with the applicant regarding Neighborhood Condition 21. He said he finds no reason to require the applicant to wait until March to begin construction.

Commissioner Vadset agreed that this is a difficult situation. He said he is a neighborhood housing advocate, and he realizes that all changes are difficult. He commented that staff has put an extraordinary amount of work into this application. SEPA is a difficult process and is unclear in some instances. He concurred with Commissioner Parker in that he appreciates that the neighborhood was allowed to negotiate with the applicant. He would like those conditions that have been agreed upon by both the applicant and the neighbors to be implemented. He also suggested that some of the areas need to be defined better such as traffic and street improvements. He felt that no matter what the Commission decides, the proposal could be improved. He said he likes the play area, but he would like to have 13 lots instead of 12. He also said he supports the requirement for an arborist report as recommended by Commissioner Marx.

Commissioner Marx agreed with Commissioner Parker's comments, as well. She said she would like to have all of the conditions listed out to make sure that everything is addressed.

Vice Chair Gabbert said he voted for the proposal initially when it was for 14 lots. He was concerned about the safety of the school children and the stormwater issues. Regarding the issue of vesting, Vice Chair Gabbert said he is satisfied, from what he has heard, that the applicant has vested his application. He commended the neighborhood in their effort to get involved and make changes. While some of the design improvements they recommended are good, they cannot, because of monetary issues, continue to require the applicant to redesign. While the design could be better, the project works as designed. He pointed out that the stormwater issues have been addressed. The character of the neighborhood has always been an issue to him in terms of the size of lots and homes, but he believes that in light of the Growth Management Act, the proposed project is appropriate. He said the applicant has done a great job of minimizing the traffic and safety issues. The fact that they did reduce the number of lots to 13 should be applauded. Vice Chair Gabbert concluded that the process of getting the developer and the adjacent property owners together to work out some of the issues has been successful.

COMMISSIONER BRADSHAW MOVED THAT THE COMMISSION AMEND THE MAIN MOTION TO ACCEPT THE 13 LOT PROPOSAL WITH AN ADDITIONAL LOT AS A RECREATION AREA. COMMISSIONER PARKER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

Chair Kuhn recalled that the original staff recommendation included 15 conditions. The Commission has concluded that Staff Condition 1 regarding density should be changed to allow for 13 lots with a recreation area. Regarding Staff Condition 2 related to clearing and grading, Chair Kuhn noted conclusion 4 in Subsection A of the staff report indicating that the applicant failed to provide an analysis as required by King county in 1990 and the City of Shoreline in 1998 that the existing fill placed on the property is suitable to support house foundations and other improvements required for residential development. He said he would hesitate to allow grading and construction to occur before that report is available. He suggested that Conclusion 4 should be made a condition of the final plat approval.

COMMISSIONER BRADSHAW MOVED TO EXTEND THE MEETING FOR 15 MORE MINUTES. COMMISSIONER PARKER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY VOTE OF 6-0.

Chair Kuhn noted that the Commission has concluded that Staff Conditions 3 through 12 should be included as part of the approval. Staff Condition 13 involves the requirement of an oil/water separator. Since the applicant has no objection to doing both the bio-swale and oil/water separator, Chair Kuhn suggested that it be included as a condition of approval. Commissioner Bradshaw suggested that with Staff Condition 13 in place, Staff Conditions 14 and 15 become unnecessary. Chair Kuhn said he would like to have assurance that Staff Condition 14 is met. He noted that Staff Condition 14 needs to be amended to include the residence at 637 Northwest 182nd. Commissioner Bradshaw commented that the water retention required in Staff Condition 13 would reduce the outflow and eliminate the need for Staff Conditions 14 and 15. Chair Kuhn suggested that this determination would have to be made by a water retention specialist. The Commission concurred that Staff Conditions 14 and 15 should be included as conditions of approval, with the additional address as referenced earlier.

Mr. Stewart said staff appreciates the argument the applicant has made regarding the preliminary and final plat. Staff suggested alternative language that would state that "no grading or clearing of the project site shall be allowed until a site development permit has been approved by the City of Shoreline." The Commission concurred.

Chair Kuhn concluded the Commission has agreed with the condition requiring that homes not exceed a maximum of two stories above ground in height and that they not be uniform in design and color. The Commission also concluded that Neighborhood Condition 13 should be changed to require a certified arborist's report for trees on adjacent properties. Trees will be replaced 2:1 in a size of at least six feet in height for every tree that is removed. The applicant would also plant two additional trees for every tree on properties abutting Tract A in which a drip line is encroached upon.

Chair Kuhn noted that the applicant has agreed to Neighborhood Condition 14 which requires non-glare street lighting. Commissioner Bradshaw said that he did not support the Neighborhood Condition 15 which would require future neighborhood input and review of street improvements. The remainder of the Commission concluded that this should be a condition.

COMMISSIONER PARKER MOVED TO ADOPT THE PROPOSED NEIGHBORHOOD CONDITION 15, INCLUDING THE REQUIREMENT FOR FUTURE NEIGHBORHOOD INPUT AND REVIEW OF STREET IMPROVEMENTS. VICE CHAIR GABBERT SECONDED THE MOTION. MOTION PASSED BY A VOTE OF 5-1 WITH COMMISSIONER BRADSHAW VOTING IN OPPOSITION.

Chair Kuhn noted that the applicant has no objection to Neighborhood Conditions 16, 17 and 20. The Commission concurred that they should be included as conditions of approval.

COMMISSIONER VADSET MOVED TO NOT ACCEPT NEIGHBORHOOD CONDITION 5 (REQUIRING THAT TRACT A BE MOVED) AS A CONDITION OF APPROVAL. COMMISSIONER PARKER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY BY A VOTE OF 6-0.

The Commission concurred that Neighborhood Condition 6 (requiring a reduction in the size of the large lot) should not be included as a condition of approval. They also concluded that Neighborhood