

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Paramount Ridge 9 Lot Preliminary Long Plat: Adoption of the Hearing Examiner Recommendation for Approval
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Director James Holland, Senior Planner

EXECUTIVE / COUNCIL SUMMARY

The decision before your Council is preliminary approval of the Paramount Ridge long subdivision proposed by Creative Construction Inc. for 15440 and 15450 10th Avenue Northeast. The application to formally subdivide these properties was first submitted on August 15, 1997, and staff determined that the application was complete on June 17, 1998. The proposed subdivision, if approved, would create nine building lots that would be occupied by seven new detached residences and the two existing residences on lots 1 and 2 (Site Plan, Attachment A).

The existing parcel is 69,488 square feet (1.6 acres) in size and the nine proposed building lots range from 9,400 square feet to 5,007 square feet in size. The undeveloped portions of both lots are well wooded and contain a number of significant trees (12" or greater trunk diameter when measured at breast height). All but the northeast corner of the site is designated as an Erosion Hazard Area under the Environmentally Sensitive Areas standards of the Shoreline Zoning Code (SMC 18.24). The property also slopes a total of 40 feet from the northwest to southeast corners (an average grade of approximately 11%) and the boundary area of lots 1 and 5 contains an earth fill bank, which has a slope of 65% at its steepest point. Access to the subdivision would be provided by a new private road and cul de sac turnaround. The new road would intersect with 10th Avenue NE at the northern boundary line of lot 2 and require the demolition of an existing garage.

Both the subject property and surrounding neighborhood are zoned R-6 residential. While some multi-family residential development and limited office development is located along 15th Avenue NE, the character of the neighborhood remains essentially single family residential (Vicinity and Zoning Map, Attachment B).

Staff review found that the proposed subdivision was located in an area with existing stormwater management problems. Based upon this finding, the designation of the property as an Erosion Hazard Area, and the presence of the previously mentioned fill bank, staff requested the applicant to provide further analysis on the proposal. Early project designs for on-site stormwater detention were revised and a geotechnical evaluation of the project site was submitted. The information provided by these studies

(together with other research performed by staff) was used to help identify the potential environmental impacts of this proposal, their offsetting mitigation measures under the SEPA Mitigated Determination of Non-Significance (Attachment C), and potential subdivision approval conditions.

A total of 29 citizen comment letters were received on this proposal by the time the public comment period ended on July 20, 1998. These comments identified a total of 16 concerns relating to the potential impact of the Paramount Ridge subdivision on the surrounding community. While a full listing of these issues is provided on pages 5 – 7 of the Staff Report to the Planning Commission (Attachment A to Hearing Examiner Exhibit G), the most frequently voiced citizen concerns are summarized in the following table:

Table 1: Major Citizen Concerns

Issue	Number of Comments	Staff Response
The Planning Commission public hearing should be delayed (from July 30, 1998) to allow interested parties more time to prepare	20	The Regulatory Reform Act of 1995 requires that the period between issuing public notice and holding a hearing is a maximum of 30 days. This limits the ability of the City to postpone or delay hearings.
Allowed removal of trees and vegetation from the project site will harm neighborhood appearance, worsen stormwater runoff and increase erosion hazard.	17	The City has Sensitive Area regulations limiting the timing and amount of vegetation removal. The project will also retain all trees in a 20-foot buffer around the east and south property boundaries and provide an on-site stormwater detention system.
The local storm drainage system (particularly on 12 th Avenue NE) is already overloaded and the proposed development will worsen this situation.	10	The City has considerable authority to review and regulate projects that create more than 1500 Sq. Ft. of impervious surface. On-site detention is required for stormwater flows greater than 0.5 cubic feet per second and any required system capacity must exist before final plat approval can be granted.
The subject property and surrounding land are unstable, with noted instances of slippage, sinkholes and underground springs.	9	The Geotechnical Report prepared for this application did not find clear evidence of these problems. Existing City regulations, together with recommended subdivision approval conditions and SEPA mitigations, will prevent degradation of the project site and potentially improve off-site conditions.
Stormwater from the Paramount Playfield currently drains onto the project site.	6	Adopted standards for design of the on-site stormwater detention system require it to accommodate existing and proposed stormwater flows. Any on-site flows from Paramount Playfield will be accommodated by the proposed system.

Staff used the above citizen input to check their review findings and assist with the drafting of the recommended subdivision approval conditions to be reviewed by the Planning Commission.

This application was reviewed at an open record public hearing by the Planning Commission on July 30, 1998. Public testimony received at the hearing identified similar concerns to those provided by the earlier citizen comment letters. Based upon their review of the public testimony and the analysis of the proposal provided in the Staff report, the Planning Commission found that the proposal complied with applicable code requirements and voted (by a majority of five votes to two) to recommend preliminary approval of the Paramount Ridge subdivision to your Council, subject to the following conditions;

1. No vegetation shall be removed from the proposed lots or access tract until Final Plat approval has been obtained and all construction plans have been reviewed by the City of Shoreline and a Site Development Permit has been issued.
Analysis: Strengthens the erosion preventing standards of the Zoning Code by preventing the removal of any existing vegetation until all the plans needed for construction of the proposal have been reviewed and accepted by the City.
2. The applicants shall widen the existing 10th Avenue NE road surface by paving from the platted centerline to the edge of the planting strip required under 3 (below).
Analysis: This condition corrects the existing deficiency in the width of 10th Ave NE in the vicinity of the proposed subdivision.
3. The applicants shall construct a five feet wide sidewalk and six feet wide planter strip immediately adjacent to the western property boundary for the lengths of Lots 1 and 2 of the proposed plat.
Analysis: Combines with recommended condition #2 to bring this section of 10th Avenue NE up to City standards.
4. Consistent with the Road Standards, the applicant may modify the design of the access tract by eliminating the proposed sidewalk on it's western side.
Analysis: The City denied the applicant's request for a road variance to reduce the width of the proposed private access road. Consistent with this request being denied, and a City objective of limiting impervious surface coverage in this project, the above condition allows the applicant to return the access road design to one that is consistent with the adopted road standards.
5. Prior to the submission of any application for final approval of the subdivision, the applicants shall submit proof of a legal public easement allowing the construction of stormwater conveyance facilities from the project site to the 12th Avenue NE stormwater collection system. The easement shall be approved by the City of Shoreline Public Works Department.
Analysis: In order for the stormwater management system proposed for this subdivision to function properly, it must be able to connect into the existing 12th Avenue NE system. To do this, a connection must be provided across adjacent private property. This condition requires the applicant to demonstrate that a proper easement has been obtained. Approval by Public Works will guarantee that the

easement allows for suitable maintenance access and will properly feed into the existing public stormwater conveyance system.

6. Road improvements required as subdivision conditions 2 and 3 (above) shall be designed to direct stormwater flows into the required planter strip.
Analysis: This condition will result in any additional stormwater runoff generated by the road improvements being directed onto the project site and (eventually) the stormwater management system. This condition also takes into account the citizen concern that runoff from the Paramount Playfield will enter the project site.
7. Fire sprinkler systems shall be installed in each house built on lots 3 through 9 of the proposed subdivision.
Analysis: This condition is required by the Fire Code due to the proposed cul de sac turnaround being smaller than the standard 40 feet radius (a variance request for a smaller turnaround was approved by the City to reduce the total impervious surface coverage of the proposal).
8. The water main system serving the proposed subdivision shall be resized to use either, a minimum pipe diameter of 8" for a deadend system, or, a minimum pipe diameter of 6" for a looped system.
Analysis: This condition was also required by the Shoreline Fire Department. Installation of the new water main system will ensure that adequate capacity is available to support the sprinkler systems required by Condition 7.
9. Prior to final plat approval, the applicant must establish a homeowners association or other entity that will be responsible for the maintenance and repair of all commonly owned facilities such as sidewalks, the private road, and landscaping installed as part of the subdivision. The duties and responsibilities for the maintenance and repair of the commonly owned facilities shall be set forth in covenants, conditions and restrictions (CC and R's) which must be reviewed and approved by the City and recorded with the King County Auditor.
Analysis: This condition requires the applicant to form a body that will be responsible for financing and performing the maintenance and repair of community facilities created by this subdivision. This condition prevents the project becoming a financial burden to the City.

On September 22, 1998, the Paramount Park Neighborhood Group filed a timely appeal of both the Planning Commission recommendation and the SEPA Mitigated Determination of Non-Significance (MDNS) issued for this proposal. The review process to be followed for a Preliminary Long Subdivision allows an administrative appeal of a Planning Commission recommendation and/or the SEPA threshold determination to be filed before the proposal is forwarded to your Council for a decision. Appeals of SEPA threshold determinations are always held by the Hearing Examiner, who has been given the authority to make a final decision on SEPA matters. When an appeal of a Preliminary Subdivision addresses both SEPA and the Planning Commission recommendation to your Council, the Hearing Examiner holds a combined closed record public hearing and forwards a recommendation on the Subdivision appeal to your Council. The report of the Hearing Examiner typically contains both the recommendation on the Subdivision appeal and his final SEPA decision for reasons of administrative convenience.

The Paramount Park Neighborhood Group (PPNG) appealed the Planning Commission recommendation and the SEPA Mitigated Determination of Non-Significance issued for the proposed Preliminary Subdivision on the following grounds:

1. Recommended Approval of the Preliminary Subdivision.

- a. The recommended approval does not contain appropriate provisions for drainage ways, as required under RCW 58.17.110 (the State Platting Statute), because preliminary approval is recommended before the required analysis of downstream drainage capacity for proposed lots 5 and 6 is done.
- b. The Preliminary Plat is invalid because it violates the zoning code's provision requiring a building setback in Erosion Hazard Areas (Section 18.24 of the Shoreline Municipal Code).
- c. The Preliminary Plat is invalid because it does not sufficiently protect soils and vegetation in the Erosion Hazard Area.
- d. The City failed to identify the public interest of the proposed subdivision and the developer failed to demonstrate that the proposal was in the public interest (as required by the State Platting Statute).

2. SEPA Mitigated Determination of Non-Significance

- a. The determination that the project (as mitigated) will not have a significant impact on the environment is not adequately supported by the record – primarily in the areas of drainage and potential flooding.
- b. The City failed to sufficiently analyze impacts to the environment, including, but not limited to, increased flooding and erosion.
- c. The City failed to consider likely direct, indirect and cumulative impacts on erosion and surface water management.
- d. The City acted in a manner that was contrary to its own codes requiring environmental protection.
- e. Neighborhood character will be adversely affected by the project.
- f. The City rightly rejected the use of infiltration pits because of their adverse environmental impacts on tree removal

The Hearing Examiner held two public hearings on these appeals on December 9, 1998. In keeping with the requirements of the Shoreline Municipal Code, the Hearing Examiner prepared a written report containing his analysis of the appeal issues, decision on the SEPA appeal, and recommendation to your Council on the Planning Commission recommendation, on December 24, 1998 (Attachment D). In this report, the Hearing Examiner denies the Paramount Park Neighborhood Group appeal of the City's SEPA MDNS and recommends the City issue preliminary approval for the proposed subdivision, subject to the adoption of additional findings and approval conditions.

The Hearing Examiner upheld the SEPA MDNS issued by the City for the following reasons:

- a. The appellants argument that the proposed subdivision will have an adverse impact on the environment - despite the required mitigations - was not supported by the record. While significant public testimony was received regarding existing

flooding problems in the area, no evidence was presented that the City requirements for on-site detention of stormwater, retention of on-site vegetation and downstream capacity analysis were inadequate.

- b. The City appropriately required on-site detention of stormwater. Further, by requiring a study confirming the existence of sufficient downstream capacity prior to final plat approval, the City has retained the ability to prohibit the development if adverse downstream impacts appear likely.
- c. Based upon analysis provided in the staff report to the Hearing Examiner and staff testimony presented at the hearing, it was apparent that the potential direct, indirect, and cumulative impacts of the proposal were properly considered by the City.
- d. Based upon review of the environmental documentation contained in the record of review, the mitigations specified in the MDNS, and the analysis provided in the staff report to the Hearing Examiner, the City acted in a manner that was consistent with its codes relating to environmental protection.
- e. With respect to neighborhood character, staff identified potential significant adverse environmental impacts associated with vegetation, land use and stormwater. Specific mitigations were required and specific provisions of the Shoreline Code that applied to the proposal were identified. The Hearing Examiner also noted that the form of the development and size of the proposed lots did not appear to be inconsistent with the pattern of residential development adjacent to the project site.

The Hearing Examiner also recommended that your Council approve the proposed Preliminary Subdivision, based upon the following analysis of the Paramount Park Neighborhood Group appeal issues;

- a. Adequate provision was made for drainage ways. The staff report, adopted by reference by the Planning Commission, discusses the drainage system in detail. The SEPA MDNS also places a condition on proposed lots 5 and 6 relative to complete downstream capacity analysis prior to final plat approval.
- b. There is no requirement in the Zoning Code for a 15 foot building setback from a designated Erosion Hazard Area. Applicable development standards clearly allow grading and clearing within these areas. Further, mitigations placed on the proposal through SEPA and the subdivision approval conditions recommended by the Planning Commission adequately protect the public, public resources and facilities.
- c. With respect to the appellants argument that the proposed plat does not sufficiently protect soils and vegetation in the erosion hazard area, the Hearing Examiner agreed that the approval conditions recommended by the Planning Commission could contain a loophole. This loophole could allow vegetation removal from the site after a Site Development Permit is issued, rather than limiting it to occur only after a building permit is issued. The Hearing Examiner recommends that the preliminary plat approval conditions recommended by the Planning Commission be supplemented to close this potential loophole.
- d. The appellant argued that the City failed to adequately protect the public interest in recommending approval of this preliminary plat by citing the issue of variances from the Fire Code. Review of the project file by the Hearing Examiner found that the conditions applied in the recommended approval are consistent with Fire

Department review and that the City has made adequate provision to protect the public interest.

While the Hearing Examiner has final decision making authority with respect to SEPA, your Council is the final decision making body for Preliminary (and Final) Subdivision approval. Acting in this capacity, your Council is able to accept or reject any of the recommendations made by either the Hearing Examiner or Planning Commission, so long as the record of review and applicable local and state laws support such an action. Your Council may, therefore, wish to consider whether, based on the record, the Preliminary Subdivision approval conditions, as recommended by the Planning Commission and supplemented by recommendation of the Hearing Examiner, are sufficient to safeguard the public health, safety and welfare, and potentially supplement them with one or more additional approval conditions.

Based upon his Findings and Conclusions presented on pages 10 and 11 of the December 24, 1998, report (Attachment D), the Hearing Examiner recommends that your Council issue preliminary approval for the proposed Paramount Ridge Subdivision. His report also recommends that any decision to approve this proposal should be supplemented by the adoption of additional findings of fact. Adopting the following findings of fact will address the procedural concerns expressed by the Paramount Park Neighborhood Group, and bring the preliminary plat review process into full conformance with state regulations.

ADDITIONAL FINDINGS OF FACT

1. The preliminary subdivision is consistent with the City of Shoreline Comprehensive Plan and Zoning Regulations and as such is in the public interest as it implements the growth management policies of the State of Washington and King County.
2. The public use and interest will be served by the platting of this subdivision by allowing infill housing consistent with the neighborhood which utilizes existing infrastructure such as parks, open space, schools, water, sewers and roads in the public vicinity.
3. Appropriate provisions have been made for the public health, safety and general welfare through application of City regulations, mitigation measures required through the State Environmental Policy Act, and conditions attached to the preliminary plat approval.
4. In recognition of existing problems of drainage and flooding downstream of this proposed subdivision, in addition to application of on-site storm drainage improvements, conditions have been applied to analyze the adequacy of the downstream drainage capacity prior to final subdivision approval.

The Hearing Examiner also recommends that the following additional conditions of approval be required for this proposal. Adoption of these additional conditions by your Council will serve to close any potential loophole allowing site clearing without a building permit and enhance the level of protection provided to the neighborhood from any downstream stormwater impacts.

Amend recommended Approval Condition 1. to read as follows (Hearing Examiner additional language is underlined):

1. No vegetation shall be removed from the proposed lots or access tract until Final Plat approval has been obtained and all construction plans have been reviewed by the City of Shoreline and a Site Development Permit has been issued. The Site Development Permit will include an erosion control plan, vegetation management plan and vegetation restoration plan. Vegetation on individual lots shall not be removed until a building permit is approved.

Add the following as new approval conditions:

10. As part of the analysis of the downstream stormwater management system required as a SEPA mitigation measure (Stormwater 2.A), in addition to capacity, the analysis should evaluate impacts of the increased total amount of water which will be discharged due to increased impervious surface and reduced vegetation. Recommendations for an ongoing monitoring program, if appropriate, shall be made.
11. If the results of the downstream stormwater management system analysis (Attachment C - Stormwater 2.A) shows that there is not adequate capacity, or if the public easement for drainage facilities cannot be obtained and the preliminary subdivision is redesigned such that the number of lots is reduced or substantially reconfigured, or the on-site drainage system is modified, or the extent of vegetation to be retained is reduced, the preliminary approval shall be remanded to the Planning Commission for further consideration at a public hearing and recommendation to the City Council.
12. In addition to the mitigation measures included in the MDNS (Attachment C – Earth 1.A) and made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, add the recommendation that a representative of Geotech Consultants, Inc., observe the footing excavations during construction to verify that suitable soil is exposed. Further, they should provide a written report with their findings and recommendations to the City of Shoreline.
13. As a supplement to the SEPA mitigation measures contained in item 3 of the MDNS (Plants/Land Use/Aesthetics, items A, B and C), all vegetation will be retained in the required 20 foot buffer areas, not just trees over 12 inches in diameter, but also trees under 12 inches in diameter, understory and ground cover. Adequate setbacks for clearing and grading and construction of buildings will be provided to assure that vegetation in the entire 20' buffer is protected. Where it is necessary that public drainage and utilities cross the buffer area, they shall be located in such a manner as to minimize their impact on the buffer, particularly significant trees, and disturbed areas shall be replanted according to City standards.

Staff recommend that your Council grant Preliminary Approval of the Paramount Ridge Subdivision, and also adopt the additional findings of fact and conditions recommended by the Hearing Examiner as part of this approval. While the Hearing Examiner has made a final decision to uphold the SEPA MDNS issued for this project, 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.

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 (including all plans required for the Site Development Permit) 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 that the proposal fully complies with applicable City development standards.

RECOMMENDATION

Approval of the Preliminary Plat for the Paramount Ridge Subdivision, with the Findings of fact, Conclusions and Conditions of the Report of the Planning Commission, as amended by the recommendation of the Hearing Examiner.

Approved By: City Manager LR City Attorney W

ATTACHMENTS

Attachment A Site Plan

Attachment B Vicinity and Zoning Map

Attachment C SEPA Mitigated Determination of Non-Significance, June 29, 1998

Attachment D City of Shoreline Hearing Examiner. Findings, Conclusion and Decision or Recommendation. Appeal of Paramount Ridge Preliminary Subdivision. December 24, 1998

Attachment E Exhibits for the Closed Record Public Hearing Held by the Shoreline Hearing Examiner on December 9, 1998:

Exhibit A: Appeal of Paramount Ridge Subdivision. Submitted by Janet Way for Paramount Park Neighborhood Group, Inc. September 22, 1998

Exhibit B: Letter from Knoll Lowney, Appellant's Attorney. November 6, 1998

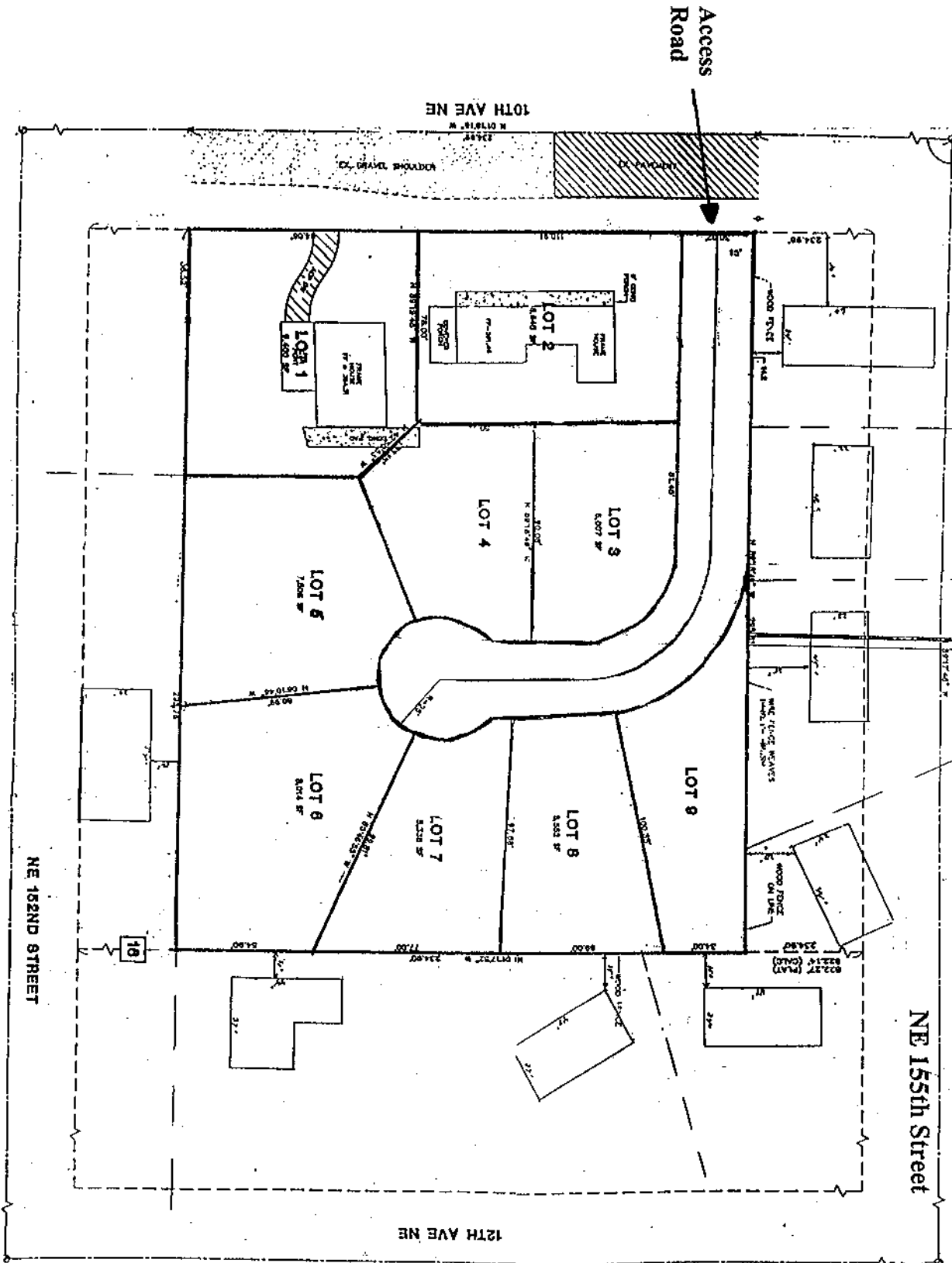
Exhibit C: Electronic Mail from Tim Stewart, Director of Planning and Development Services, City of Shoreline. November 9, 1998

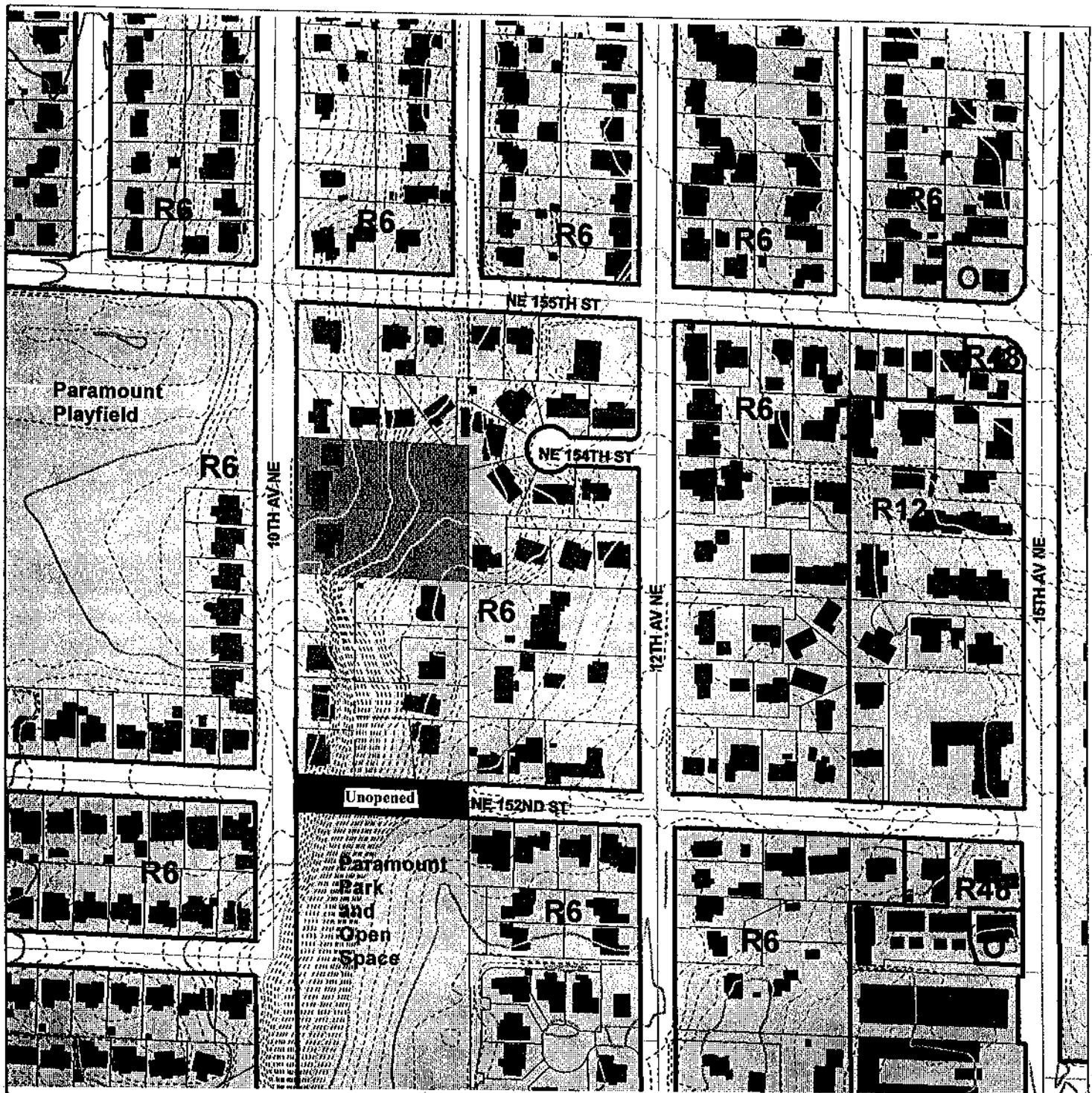
Exhibit D: Electronic mail from James Holland, planning and Development Services, City of Shoreline. November 9, 1998

Exhibit E: Letter from James Holland, Planning and Development Services, City of Shoreline. November 9, 1998. (NOTE: The videotape mentioned in this letter is not part of the record).

- Exhibit F: Planning and Development Services Department Record for the Paramount Ridge Preliminary Long Subdivision. Submitted to the City Clerk on November 9, 1998. **(NOTE:** This record is available for review in the City Clerks office)
- Exhibit G: Staff Report to the Hearing Examiner. Submitted by James Holland, Planning and Development Services. Received by City Clerks Office on December 2, 1998
- Exhibit H: Applicants Response to Notice of Appeal, from Samuel Jacobs, Applicant's Attorney. December 2, 1998
- Exhibit I: Appeal Brief from Knoll Lowney, Appellant's Attorney. Faxed to City Clerk on December 2, 1998
- Exhibit J: Photograph (Aerial) of Site. Submitted by Janet Way, Appellant, at the December 9, 1998 Public Hearing. **(NOTE:** This photograph is available for review in the City Clerks office)

SITE PLAN





Subject Property is highlighted

1997-01594

15450 and 15440 10th Avenue NE



City of Shoreline
Planning and Development Services





*City of Shoreline
Planning and Development
Services Group*

17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-2338 ♦ Fax (206) 546-8761

SEPA THRESHOLD DETERMINATION

**MITIGATED DETERMINATION OF NON-SIGNIFICANCE ISSUED FOR
PARAMOUNT RIDGE SUBDIVISION, 18842 MERIDIAN AVENUE,
SHORELINE**

PROPOSAL: Formal Subdivision of Two Building Lot Into Nine
Single Family Residential Building Lots

PROJECT NO: 1997-01594

LOCATION OF PROPOSAL: 15450 10th Ave NE
Shoreline, WA 98155

APPLICANT: Creative Construction Inc.
1243 NE 152nd St.
Shoreline WA 98155

CURRENT ZONING: R-6 Residential (6 Dwelling Units Per Acre)

LEAD AGENCY: City of Shoreline

THRESHOLD DETERMINATION: Mitigated Determination of Non-Significance (MDNS)
The City of Shoreline has determined that the proposal will not have a probable significant adverse impact on the environment and that an environmental impact statement is not required under RCW 43.21C.030(2)(c). An MDNS has been issued, subject to the following mitigating measures and conditions:

MITIGATION LIST:

The following mitigation measures and conditions are required to clarify and change the proposal in accordance with WAC 197-11-350:

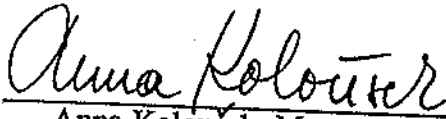
1. Earth

- A. The applicant shall comply with the following recommendations made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, specifically;
- i. The steep fill slope located in the northwest corner of lot 5 be regraded to an inclination of no steeper than 2:1 (Horizontal/Vertical) for appropriate long-term stability.
 - ii. All bare areas should be revegetated or be mulched with straw to reduce erosion until permanent landscaping and vegetation are in place.
 - iii. A silt fence should be erected along the downslope sides of the development area.

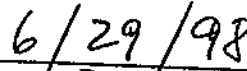
- iv. The storm drain system for the proposed street should be installed and functional early in the development process.
 - v. No fill or debris from the clearing or excavation should be placed on the downslope sides of the houses, unless properly retained by an engineered wall.
 - vi. Temporary slopes cannot be excavated at a grade of more than 1:1 (Horizontal:Vertical).
 - vii. All permanent cuts into native soil should be inclined no steeper than 2:1 (Horizontal:Vertical).
 - viii. Water should not be allowed to flow uncontrolled over the top of any slope.
 - ix. All permanently exposed slopes should be seeded with an appropriate species of vegetation to reduce erosion and improve the stability of the surficial layer of soil.
- B. In addition to regrading the fill slope located on Lot 5 of the proposal in accordance with the recommendations made by Geotech Consultants, Inc., the applicant shall plant the slope with suitable native vegetation.
- 2. Stormwater**
- A. Prior to the submission of an application for final plat approval, the applicant shall submit an analysis of the downstream stormwater management system. The analysis shall determine whether sufficient system capacity exists to safely accommodate the runoff flows to be generated by lots 5 and 6 of the proposal and make recommendations for these flows based on its findings.
- B. Prior to placing any fill on the slope surcharging the existing rockery wall in the southeast corner of the subject property, the applicant shall place a footing drain at the base of the rockery. This drain shall feed into a dedicated catchbasin which should then connect to the existing storm drain system.
- 3. Plants/Land Use/Aesthetics**
- A. Prior to the submission of an application for final plat approval, the applicant shall submit a plan that provides for the preservation of all significant trees (12" or greater trunk diameter at breast height) located outside of identified access road, driveway and building footprints.
- B. The applicant shall include with the plan required under A, above, a written report identifying specific protection methods to be used for each identified tree during and after site clearing and development.
- C. The applicant shall dedicate a minimum 20' wide buffer along the east and south boundaries of the subject property. This buffer shall include rear yard setbacks required under the Shoreline Zoning Code (Title 18 SMC), and remain undisturbed by construction except in the southeast corner of the property, where fill may be added to the existing slope in accordance with the provisions of the grading plan and SEPA Mitigation 3.B. above. No significant trees may be removed from this buffer area.

PUBLIC COMMENTS:

This MDNS is issued under WAC 197-11-350. The lead agency will not act upon this proposal for 15 days from the date of issuance. Any interested party may submit written comments on this project to the City of Shoreline Planning and Development Services Department. Written comments must be received before 5:00 PM on July 20, 1998. If you have any questions, please call the Project Manager, James Holland, at 546-3542, or write to; City of Shoreline, Development Services Group, 17544 Midvale Avenue North, Shoreline, WA 98133.



Anna Kolousek, Manager
Development Services


Date

**CITY OF SHORELINE
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION OR RECOMMENDATION

APPELLANT: Paramount Park Neighborhood Group, Inc.
Represented by Smith & Lowncy, P.L.L.C.

FILE NUMBER: 1997-01594

APPEALS: Paramount Park Neighborhood Group, Inc., is appealing the recommendation of the Shoreline Planning Commission to approve the Paramount Ridge Subdivision Preliminary Plat and the Mitigated Determination of Non Significance, June 29, 1998, with respect to that project.

REVIEW PROCESS: The Hearing Examiner conducts a closed record appeal on the subdivision and makes a recommendation to the Shoreline City Council. The Hearing Examiner conducts the hearing on the SEPA appeal and makes the decision. Both appeals are discussed in this report.

I. BACKGROUND:

A. Location and Neighborhood: The subject property is located at 15440 and 15450 10th Avenue Northeast. This property is located in the Paramount Park Neighborhood adjacent to the Paramount Playfield and Paramount Park and Open Space. The area surrounding the proposed subdivision is predominantly single family residential in character with no multiple family or commercial development in the immediate vicinity. Tenth Avenue NE dead ends just south of the property.

B. The Proposal: The applicant, Creative Construction Inc., is proposing to formally subdivide (Long Plat) two adjacent properties into a total of nine (9) residential building lots. The property is 1.595 acres (69,488 square feet) in size and is zoned R-6 residential. The average size of the proposed lots, excluding the access and tract and turnaround, would be 6,653 square feet. The lots range in size from 5,007 square feet to 9,400 square feet. The two existing houses on lots 1 and 2 facing 10th Avenue Northeast would remain and lots 3 through 9 would be served by a private road with a turnaround accessed from 10th Avenue Northeast.

C. Comprehensive Plan Designation: The 1994 King County Comprehensive Plan designation for the subject property is medium density urban residential development (UM

designation, 4 - 12 residential units per acre). The project as proposed is slightly less than 6 residential units per acre.

D. Zoning Designation: The subject property is zoned R-6 - (Residential, six dwelling units per acre) which applies to approximately 85% of the City of Shoreline.

E. Procedural History: The application for these properties has been processed in the following sequence:

- | | |
|--|--------------------|
| - Application first submitted to Development Services | August 15, 1997 |
| - Completion of preliminary staff review with request for additional information | November 1997 |
| - Submission of additional information | March/June 1998 |
| - Determination of Complete Application | June 17, 1998 |
| - SEPA Review Completed - Issued MDNS | June 29, 1998 |
| - Preliminary Public Notice to Neighbors | July 1, 1998 |
| - Publication in The Seattle Times & Shoreline Enterprise | July 2, 1998 |
| - Staff Report Issued | July 21, 1998 |
| - Open public hearing before Planning Commission | July 30, 1998 |
| - Planning Commission Recommendation to City Clerk | August 31, 1998 |
| - Notice to Parties of Record with September 22 deadline | September 4, 1998 |
| - Appeal filed by Paramount Park Neighborhood Group | September 22, 1998 |
| - Appeal Hearing Scheduled / Delayed due to lack of Record | November 18, 1998 |
| - Rescheduled Appeal Hearing before Hearing Examiner | December 9, 1998 |

F. Issues of the Appeal: The issues are separated into those dealing with the recommended approval of the Preliminary Subdivision and those dealing with the SEPA Mitigated Determination of Non-Significance.

1. Recommended Approval of the Preliminary Subdivision: The applicant argues that the Planning Commission erred in matters of law and that their conclusions are not adequately support by the record in the follow:

a. Recommended approval does not contain "appropriate provisions" for drainage ways as required by RCW 58.17.110 because the preliminary approval is recommended before the analysis of downstream drainage capacity which affects primarily lots 5 and 6 is done.

b. The Preliminary Plat is invalid because it violates the zoning code's provision requiring a building setback in sensitive areas (SMC 18.24) - specifically the Erosion Hazard Area.

c. The Preliminary Plat is invalid because it does not sufficiently protect soils and vegetation in the Erosion Hazard Area.

d. The City failed to identify the public interest of the proposed subdivision required by RCW 58.17.110 and the developer has not demonstrated public interest as required by KCC 19.08.050.

2. Mitigated Determination of Non Significance (MDNS): The applicant argues that the MDNS on Paramount Ridge Subdivision was inadequate and contrary to SEPA in the following ways:

- a. The determination that the project will not have a significant impact on the environment is not adequately supported by the record primarily in the areas of drainage and potential flooding.
- b. The City failed to sufficiently analyze impacts to the environment including, but not limited to increased flooding and erosion.
- c. The City failed to consider likely direct, indirect and cumulative impacts on erosion and surface water management.
- d. The City acted contrary to its own codes related to environmental protection.
- e. Neighborhood character will be adversely affected by the project, and
- f. The city rightly rejected infiltration pits because of their adverse environmental impacts on tree removal, buffers and increasing danger of flood, landslide and erosion.

II. PUBLIC HEARING:

On December 9th, 1998, the Hearing Examiner held public hearings on the appeals. They were opened at 7:05 p.m. in the Mount Rainier Room of the Shoreline Conference Center and were closed at 9:30 p.m.

At the beginning of the public hearing, the Hearing Examiner indicated that he had visited the site and the surrounding neighborhood. He stated that he had reviewed the record, including listening the tapes of the Planning Commission hearing, as well as reviewed submitted staff report and briefs of the appellant and applicant. Each witness was asked to affirm that the information they would provide was true.

It was noted that a video of drainage problems in Paramount Park had been submitted to the Planning Commission but was now viewed by them as part of their deliberations. The Hearing Examiner ruled that it would not be considered as part of the record. Objection by the appellant to not including the video was noted by the Hearing Examiner. It was also noted that the burden of proof was on the appellant.

Testimony was first taken on the closed record appeal of the recommendation of the Planning Commission to approve the Preliminary Subdivision and then on the appeal of the SEPA determination. Testimony was offered at the closed record appeal hearing by the City of Shoreline, the appellant and the applicant. Testimony offered at the appeal of the SEPA determination was offered by the City of Shoreline, the appellant, the applicant and citizens. Objection by the applicant to allowing testimony by citizens on the SEPA Appeal was noted by the Hearing Examiner.

Those who testified are as follows:

City of Shoreline (both hearings):

Anna Kolousek, Manager, Development Services
James Holland, Project Planner, Development Services
Daniel Bretzke, Project Engineer, Development Services
Robert Noe, Attorney

Appellant (both hearings):

Rick Poulin, Attorney, Smith & Lowney, Paramount Park Neighborhood Group
Janet Way, President, Paramount Park Neighborhood Group

Applicant: (both hearings)

Sam Jacobs, Attorney, Loucks and Lamb
Gary Cooper, Lynscot A. Corporation

Citizens at SEPA Appeal Hearing:

Ginger Botham
Jacque Ankara
Cecilie Hudson
Richard Tinsley
Peter Schwindt

Testimony of the City summarized the proposal, and the City's analysis on the key issues of the appeal contained in the Staff Report (Exhibit G).

The appellant summarized the issues identified in the submitted brief, emphasizing that the preliminary subdivision has been approved without downstream analysis, that the process would not allow future public involvement when the information was available and that adequate provision had not been made to protect sensitive areas through the requirements of erosion control, vegetation management and restoration plans.

The applicant indicated that they supported the recommendation of the City; however, they could understand neighborhood concerns due to the existing drainage and flooding problems in the area. He noted that the proposal with the conditions meets the City's regulations and that the issues identified by the appellant will be completed prior to final approval. He noted that the staff report has extensive discussion of the public interest, particularly in assuring compliance with the requirements of the Growth Management Act.

In response to the appellant's testimony the City testified as follows:

- Daniel Bretzke reviewed the issue of downstream drainage and the City's review process. He also noted that the infiltration system was rejected because it required the removal of more trees.
- James Holland discussed that the City's regulations anticipate erosion hazard areas will be developed, therefore the 15 foot setback is not applicable. He reviewed the other provisions

of the Sensitive Areas chapter. He also discussed the requirements for a vegetation management plan and that the Site Development Permit combines erosion control and vegetation management.

- Anna Kolousek reviewed the requirement for a plan of the trees to be retained and the required construction mitigation to assure their retention.

The appellant rebutted staff testimony noting that he felt the Shoreline Code is clear in requiring a restoration plan. He also expressed concern about the ability of the City to enforce tree retention based on other experience in the neighborhood where trees were removed.

In response the City noted that there is no penalty but that they required replacement to cover the same drip line area prior to removal. Robert Noe noted the enforcement provisions available to the City. He also noted that this was a Preliminary Plat which was the basis for general layout and that all conditions would have to be met prior to approval of the Final Plat.

The appellant indicated that this assumed a trust that the City could perform adequate monitoring which had not been demonstrated on other projects in this area.

The closed record appeal portion of the hearing was closed and the portion of the hearing on the SEPA appeal was opened.

James Holland for the City referenced their testimony on the Preliminary Subdivision.

Rick Poulin for the appellant summarized the elements of this portion of their appeal emphasizing that the City erred in issuing a Mitigated Declaration of Non Significance because they relied on deferred analysis of downstream impacts which precluded public input; that they failed to consider cumulative impacts; ignored the surface water issues and potential for erosion and slides; inadequately evaluated the impact on the character of the neighborhood.

Sam Jacobs for the applicant summarized that this proposal is only adding 7 houses. He noted that the burden of proof is on the appellant and that little evidence has been provided such as soils reports refuting information used by the City or documentation that the development will decrease property values. He noted that the environmental review was adequate and consistent with requirements of SEPA. He recognized that although the appellant would like it to mitigate "all" potential impacts, that that was not a requirement of the process.

Janet Way presented a map to illustrate that the downstream drainage is not, in fact, a drainage system.

Jacque Ankara expressed concern that the rate of flow was only one part; the other aspect is the additional amount of water which will be flowing over a longer period of time because of increased impervious surface and less vegetation.

Peter Schwindt indicated that he felt the City had a responsibility for conducting adequate analysis to make the environmental determination.

Ginger Botham questioned how the applicant could size on-site retention for a 25 year storm rather than a 100 year storm based on the sensitivity to flooding of this area. Daniel Bretzke responded that this meets City regulations and the 100 year provision applies downstream.

Richard Tinsley noted that the removal of vegetation and replacement with impermeable surfaces will have a significant impact.

Cecilie Hudson noted that the code as it stands is not adequate and that the downstream flooding is a horrible mess.

Rick Poulin noted that it is true that the burden of proof is on them as appellant; however, it is also appropriate to indicate where the decisions are not supported by substantial evidence in the record. Sam Jacobs indicated that he felt the decisions were supported by the record.

III. ANALYSIS OF ISSUES and PRELIMINARY CONCLUSIONS:

The following summarizes the key points and the preliminary conclusions of the Hearing Examiner by each of the items contained in Section I, F. The numbers on each issue relate to that section

Recommended Approval Of Preliminary Subdivision

The following discussion relates directly to the issues identified in the previous section. It should be noted that the staff report is identified as Findings of Fact; however, the required findings identified in RCW 58.17.110 have not been made, although all the provisions are analyzed in the staff report and are covered by the recommended conditions.

Preliminary Conclusion: Specific findings consistent with RCW 58.17.110 should be incorporated and adopted.

F.1.a. The appellant indicates that the Planning Commission erred by not having the downstream drainage capacity analysis prior to preliminary approval it does not make "adequate provision" for drainage ways and violates the public participation elements of RCW 58.17. The staff report, adopted by reference by the Planning Commission, discusses in detail the drainage system and the MDNS places a condition on proposed Lots 5 and 6 relative to complete the downstream capacity analysis prior to final plat approval.

Preliminary Conclusions: A review of RCW 58.17, the staff report and the public hearing tapes indicates to the Hearing Examiner that adequate provision has been made for drainage; that conditioning the approval of preliminary plat is appropriate; and that the City has complied with the required public participation elements.

F.1.b. The appellant indicates that the preliminary plat is invalid because it violates the zoning code requirement for a 15 foot setback in Sensitive Areas, specifically Erosion Hazard Areas (18.24.220). Although Erosion hazard areas are included in the Chapter (18.24) on Environmentally Sensitive Areas, it is obvious from the discussion of development standards that it is allowed to clear the lots and to build on them with certain conditions for vegetation retention and erosion control plans. The conditions require that vegetation not be removed until a building permit is approved on individual lots and noted in 18.24.220.C.1. In Section 18.24.180 where the SMC discusses the use of Sensitive Area Tracts, the referenced sensitive areas are: landslide hazard areas and buffers, steep slope hazard areas and buffers, wetlands and buffers and streams and buffers. Erosion Hazard Areas are not included.

Preliminary Conclusion: The proposed preliminary plat is not invalid because of no requirement for a 15 foot setback since the applicable development standards allow clearing and development within erosion hazard areas. Further conditions applicable to the approval provide adequate protection of the public, public resources and facilities.

F.1.c. The appellant argues that the preliminary plat is invalid because it does not sufficiently protect soils and vegetation in the erosion hazard area. It notes that the applied condition appears to allow removal of vegetation with a Site Development Permit which is prior to the issuance of a building permit for individual lots. It also notes that maintenance and monitoring measures, vegetation management plan and a restoration plan are not required.

Preliminary Conclusions: The appellants argument that reference to these requirements is valid and should be made more explicit in the conditions.

F.1.d. The appellant argues that the City failed to inquire into the public interest citing the issue of variances from the fire code. A review of the project file indicates that the conditions applied in the recommended approval are consistent with the review by the Fire Department.

Preliminary Conclusion: The City has made adequate provision to protect the public interest.

Appeal of Mitigated Determination of Non-Significance

F.2.a The appellant argues that the City's determination that the proposed subdivision will not have a probable significant adverse impact on the environment is not supported by the record. Significant public testimony was received related to the existing flooding which currently occurs downstream of this project impacting homes on private property and Paramount Park and Open Space. Runoff from this project will be detained on-site and released at per-development rates per adopted stormwater standards. As a condition of the approval an analysis of downstream capacity must be made to accommodate the runoff flows to be generated by lots 5 and 6.

Preliminary Conclusions: Testimony clearly indicates that there is already a significant flooding problem downstream of this site; however, little evidence was provided that the proposed project will have a probable significant adverse impact that was not mitigated by the

proposed on-site drainage system, requirements to retain existing vegetation and the condition for downstream capacity analysis.

F.2.b The appellant argues that in issuing the MDNS the City failed to sufficiently analyze impacts to the environment including, but not limited to increased flooding and erosion. A key contention relates to the timing of the analysis of the potential downstream impacts. The appellant notes that the City has "assumed" there is adequate capacity; however the condition specifically states that the analysis "shall determine whether sufficient capacity exists to safely accommodate the runoff flows generated by lots 5 and 6 of the proposal . . ." An example of potential storm runoff was provided in the appellant's brief; however no qualifications were provided for the person preparing the illustrated situation to assess its validity.

Preliminary Conclusion: The City has applied the requirements for on-site retention and a condition to evaluate the downstream capacity prior to final subdivision approval.

F.2.c The appellant argues that the City failed to consider likely direct, indirect and cumulative impacts of the proposal and other permitted and planned developments. In testimony, Daniel Bretske indicated that they had taken into account information from other projects which have given them good information on the downstream issues. He noted potential downstream routes that had been considered. Anna Kolousek, Manager, Development Services, discussed that the cumulative impacts had been considered in their determination.

Preliminary Conclusion: Based on analysis in the staff report and staff testimony, the potential direct, indirect and cumulative impacts have been adequately considered.

F.2.d The appellant argues that by issuing a MDNS the City acted contrary to its own codes related to environmental protect. Specific references are made to off-site discharge of stormwater noting the requirement that it be limited to pre-development volume and adequate downstream capacity. Although the developer does not have easements to conform to these requirements, they must be in hand prior to final approval. All of these requirements will be evaluated prior to final plat approval. There are also broad statements of lack of consideration of other environmental factors with little confirming information provided.

Preliminary Conclusion: Based on a review of the environmental documentation and mitigation and the staff report, it appears that the City has acted in a manner consistent with its codes related to environmental protection.

F.2.e. The applicant argues that neighborhood character will be adversely affected by the project. In that discussion there are comments about the need to identify environmental policies on which the mitigation measures are based and the impacts to be mitigated. A review of the Environmental Checklist shows that the staff "identified potential significant adverse environmental impacts associated with . . . vegetation, land use, and stormwater." Review notations indicated specific provisions of the code which were applicable. The MDNS mitigation measures directly addresses these areas.

Preliminary Conclusion: In visiting the site and driving through the neighborhood it was noted that the four lots immediately to the north are served by a private lane accessing from

10th Ave. NE serving 4 lots; and to the east there is another private lane serving 4 lots and a cul de sac serving 7 lots. It does not appear that the lots are "significantly" larger as represented in the brief but that they fall within the size ranges contained in this proposed preliminary plat.

F.2.f. The appellant notes that the City rightfully rejected the proposed infiltration pits because of their environmental impact by requiring removal of trees and buffer areas.

Preliminary Conclusion: This appears to not be an appeal issue, but does indicate that the City considered the proposal in enough detail to understand the potential impacts on flooding, landslides and erosion.

IV. FINDINGS:

1. The key issues of these appeals as identified by the appellant are:
 - a. Whether errors of law require the Hearing Examiner to deny the preliminary subdivision.
 - b. Whether the Planning Commission's findings and recommendations are supported by the record.
 - c. Whether errors of law require the Hearing Examiner to reverse the SEPA MDNS?
 - d. Whether the SEPA MDNS is supported by the record.
2. The rules of procedure adopted by the City of Shoreline for appeals to the City Council and Hearing Examiner place the burden on the appellant for establishing that the decision is not supported by the preponderance of the evidence.
3. The subdivision of these two properties into a total of 9 lots is consistent with the provisions of the City of Shoreline Comprehensive Plan and Zoning Code.
4. The City conducted an environmental analysis of the proposal and concluded that it would not have a probable significant adverse impact on the environment. On June 29, 1998 they issued a Mitigated Declaration of Non-Significance which contained seven conditions related to: Earth; Stormwater; and Plants/Land Use/Aesthetics.
5. The Planning Commission held an open record public hearing on the Preliminary Subdivision on July 30, 1998. After extensive public testimony the Planning Commission recommended approval of the Preliminary Plat based on the Staff Report (dated, July 21, 1998) which was identified as Findings of Fact and which contained nine conditions in addition to the mitigation measures attached to the MDNS.
6. The appellant, Paramount Park Neighborhood Group, filed a timely appeal on September 22, 1998.

7. The Planning Commission in adopting the Staff Report considered the provisions required in RCW 58.17.110; however, it erred in not making specific written findings.
8. The lot size, configuration and method of access is consistent with existing development surrounding the proposed development.

V. CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to conduct a closed record appeal of the Planning Commission's recommendation on the Paramount Ridge Preliminary Subdivision and to make a recommendation to City Council for a decision.
2. The Hearing Examiner has jurisdiction to consider and to decide the issues presented related to the SEPA appeal.
3. On the issues of the appeals, the appellant has the burden of establishing that the recommendation and SEPA determination are not supported by the preponderance of the evidence. The issues related to the appeals focused primarily on four issues:
 - Not having the downstream drainage capacity analysis prior to preliminary approval of the subdivision or issuing a MDNS;
 - Allowing development within a Erosion Hazard Area without setbacks and without specific provisions for erosion control plans and vegetation management and restoration plans;
 - Adverse impact on the character of the neighborhood; and,
 - Timing of analysis required in conditions which precludes public review and input.
4. The proposed subdivision is consistent with the neighborhood in lot size and configuration and no evidence was presented that it will have an adverse impact on property values.
5. The information and reports submitted with the application, review notations on the Environmental Checklist and the mitigations applied to the MDNS indicate that the record adequately identifies and address environmental issues associated with the project.
6. The Planning Commission and City staff did not make errors of law which require the Hearing Examiner to deny the preliminary subdivision or reverse the SEPA MDNS to require an EIS.
8. The Staff Report adopted by the Planning Commission provided all the documentation and analysis for Findings of Fact; however, specific findings consistent with RCW 17.58.110 should be made by the City Council and certain conditions should be clarified or added if the recommendation is adopted.

VI. RECOMMENDATION AND DECISION:

A. Recommendation On Preliminary Plat Approval For Paramount Ridge

Based on the previous Findings of Fact and Conclusions it is recommended that the City Council approve the Preliminary Plat for Paramount Ridge based on the Conditions recommended by the Planning Commission and the mitigation measures contained in the MDNS. In addition, it is recommended that the City Council;

1. Supplement the record with the written findings consistent with the provisions of RCW 58.17.110; and,
2. Adopt supplementary language to recommended conditions or add new conditions to respond to certain issues identified in the appeals.

The proposed additional findings of fact are as follows:

1. The preliminary subdivision is consistent with the City of Shoreline Comprehensive Plan and Zoning Regulations and as such is in the public interest as it implements the Growth Management policies of the State of Washington and King County.
2. The public use and interest will be served by the platting of this subdivision by allowing infill housing consistent with the neighborhood which utilizes existing infrastructure such as parks, open space, schools, water, sewers and roads in the vicinity.
3. Appropriate provisions have been made for the public health, safety and general welfare through application of City regulations, mitigation measures required through the State Environmental Policy Act, and conditions attached to the preliminary plat approval.
4. In recognition of existing problems of drainage and flooding downstream of this proposed subdivision, in addition to application of on-site storm drainage improvements, conditions have been applied to analyze the adequacy of the downstream drainage capacity prior to final subdivision approval.

The proposed additional conditions are as follows:

1. Add the following to Condition 1 of the preliminary approval: "The Site Development Permit will include an erosion control plan, vegetation management plan and vegetation restoration plan. Vegetation on individual lots shall not be removed until a building permit is approved.
2. Add a new condition 10: "As part of the analysis of the downstream stormwater management system required as a mitigation measure (Stormwater 2.A) in addition to capacity, the analysis should evaluate impacts of the increased total amount of water which will be discharged due to increased impervious surface and reduced vegetation. Recommendations for an ongoing monitoring program, if appropriate, shall be made."

3. Add a new condition 11. "If the results of the downstream stormwater management system (Stormwater 2.A) shows that there is not adequate capacity, or if the public easement for drainage facilities cannot be obtained and the preliminary subdivision is redesigned such that the number of lots is reduced or substantially configured or the on-site drainage system is modified or the extent of vegetation to be retained is reduced, the preliminary approval shall be remanded to the Planning Commission for further consideration at a public hearing and recommendation to the City Council.

4. Add a new condition 12: "In addition to the mitigation measures included in the MDNS (Earth 1A) made in the soils analysis of the subject property prepared by Geotech Consultants, Inc., and dated June 16, 1998, add the recommendation that a representative of Geotech Consultants, Inc. observe the footing excavations during construction to verify that suitable soil is exposed. Further, they should provide a written report with their findings and recommendations to the City of Shoreline."

5. Add a new condition 13: "As a supplement to the mitigation measures contained in item 3. Plants/Land Use/Aesthetics, items A, B and C, all vegetation will be retained in the required 20 foot buffer areas not just trees over 12 inches in diameter but also trees under 12 inches in diameter, understory and ground cover. Adequate setbacks for clearing and grading and construction of buildings will be provided to assure that vegetation in the entire 20 buffer is protected."

B. Appeal Of SEPA Mitigated Determination Of Non-Significance

Based on the foregoing findings of facts and conclusions, the appeal of the SEPA Mitigated Determination of Non-Significance is denied.

EXHIBITS:

See attached list of Exhibits.

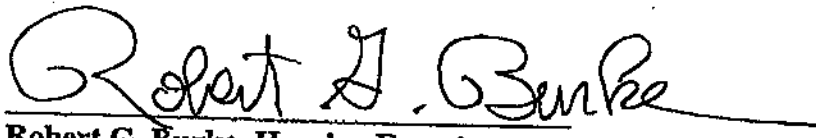
PARTIES OF RECORD:

Jacque Ankara
14849 12th Ave. NE
Shoreline, WA 98155

Peter Schwindt
2209 NE 177th
Shoreline, WA 98155

See Attached List entitled "Parties of Record List from James Holland"

Entered this 23rd Day of December, 1998. The decision of the Hearing Examiner on the SEPA Appeal shall be the final decision on any appeal.



Robert G. Burke, Hearing Examiner

APPEAL:

An appeal of the Hearing Examiner's decision is governed by RCW 43.21C.075, the appeal section of SEPA statutes. Under this provision an appeal of the environmental determination must be combined with an appeal of the underlying governmental action.

EXHIBIT LIST**Paramount Ridge Subdivision****(Project No. 1997-01594)****SHORELINE HEARING EXAMINER
CLOSED RECORD PUBLIC HEARING
December 9, 1998**

- Exhibit A** Appeal of Paramount Ridge Subdivision
Submitted by Janet Way for the Paramount Park
Neighborhood Group, Inc.
Dated September 22, 1998
Filed with City Clerk September 22, 1998
- Exhibit B** Letter from Knoll Lowney, Appellant's attorney
Dated November 6, 1998
Fax received by Deputy City Clerk on November 6, 1998
- Exhibit C** Electronic Mail from Tim Stewart, Director of Planning &
Development Services, City of Shoreline
Dated November 6, 1998
E-Mail received by Deputy City Clerk on November 6, 1998
- Exhibit D** Electronic Mail from James Holland, Planning &
Development Services, City of Shoreline
Dated November 9, 1998
E-Mail received by Deputy City Clerk on November 9, 1998
- Exhibit E** Letter from James Holland, Planning & Development
Services, City of Shoreline
Dated November 9, 1998
Received by Deputy City Clerk on November 9, 1998
- Exhibit F** Planning and Development Services Department Record for
the Paramount Ridge Preliminary Long Subdivision
Submitted to Sharon Mattioli, City Clerk on November 9,
1998

- Exhibit G** Staff Report to the Hearing Examiner
Submitted by James Holland, Development Services,
City of Shoreline
Not dated - Received in City Clerk's Office on December 2, 1998
- Exhibit H** Applicant's Response to Notice of Appeal from Samuel
Jacobs, Applicant's Attorney
Dated December 2, 1998
Faxed to City Clerk on December 2, 1998
- Exhibit I** Appeal Brief from Knoll Lowney, Appellant's Attorney
Not dated - Faxed to City Clerk on December 2, 1998
- Exhibit J** Photograph (aerial) of site
Submitted by Janet Way, Appellant, at the hearing on
December 9, 1998

PARTY OF RECORD LIST FROM JAMES HOLLAND (PADS)

Gary Cooper
Lynscot A. Corporation
20351 Greenwood Avenue N.
Shoreline, WA 98133

Olof Krammer
857 NE 151st Street
Shoreline, WA 98155

Anne Sakai
1103 NE 153rd Place
Shoreline, WA 98155

Gail M. Hamtner
15252 12th Ave. NE
Shoreline, WA 98155

Hopa Crippen
15402 12th Ave NE
Shoreline, WA 98155

Severa A. Guillen
P.O. Box 1007
Buckley, WA 98321

Donna Egen
15104 11th Ave NE
Shoreline, WA 98155

Lauren Basson
15205 11th Ave NE
Shoreline, WA 98155

Mikhail and Tanya Golant
15464 10th Ave NE
Shoreline, WA 98155

Jon and Joan Desrosier
1104 NE 152nd Street
Shoreline, WA 98155

Chris and Shanna Harris
14729 12th Ave NE
Shoreline, WA 98155

Steve and Sandra Elliot
15028 12th Ave NE
Shoreline, WA 98155 - 7116

Ed and Audrey Waddell
1019 NE 155th Street
Shoreline, WA 98155

Janet Way
940 NE 147th St.
Shoreline, WA 98155

Matthew Howland
Creative Construction Assoc., Inc.
15836 38th Ave NE
Lake Forest Park, WA 98155

Igor and Inna Ioffe
15462 10th Ave NE
Shoreline, WA 98155

E. Clive Stewart
1039 NE 154th St.
Shoreline, WA 98155

Sherry Harris
Thornton Creek Alliance
P.O. Box 25690
Seattle, WA 98125

Richard B. Tinsley
14855 6th Ave NE
Shoreline, WA 98155

Jan Stewart
14613 9th Place NE
Shoreline, WA 98155

Don and Gerri Martin
1105 NE 152nd Street
Shoreline, WA 98155

Marylon Evans
15225 11th Ave NE
Shoreline, WA 98155

Vicki Westberg
1231 NE 148th Street
Shoreline, WA 98155

Property Owner
857 NE 151st Street
Shoreline, WA 98155

Kathi and Roberto Swain
1115 NE 153rd Place
Shoreline, WA 98155

Meredith Hummibell
1111 NE 152nd St.
Shoreline, WA 98155

Resident
1117 NE 152nd Street
Shoreline, WA 98155

Toby Gorsline
15026 12th Ave NE
Shoreline, WA 98155

David A. Kalman
15233 11th Ave. NE
Shoreline, WA 98155

Resident
1121 NE 153rd Place
Shoreline, WA 98155

Shane and Lois Hall
1120 NE 152nd Street
Shoreline, WA 98155

Ginger Botham
16334 Linden Avenue N.
Shoreline, WA 98133

Olive Stewart
1039 NE 154th St.
Shoreline, WA 98155

Autumn Sakai
1163 NE 153rd Place
Shoreline, WA 98155

Cecilie Hudson
15233 11th Ave NE
Shoreline, WA 98155

Knoll D. Lowney
Smith & Lowney
1108 Smith Tower
506 Second Avenue
Seattle, WA 98104

Sarguel Jacobs
Loucks and Lamb
425 Pike Street, #402
Seattle, WA 98101

**CITY OF SHORELINE
HEARING EXAMINER**

RECEIVED

JAN 11 1999

City Clerks Ofc.

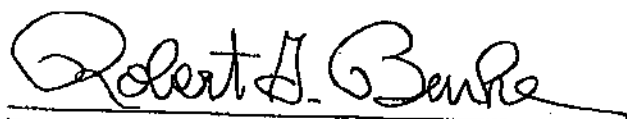
CLARIFICATION OF SECTION VI: RECOMMENDATION AND DECISION

APPELLANT: Paramount Park Neighborhood Group, Inc.
FILE NUMBER: 1997-01594
APPEAL: Recommendation of Shoreline Planning Commission to approve
 Paramount Ridge Subdivision Preliminary Plat.

The following is in response to a letter from Creative Construction, dated December 31, 1998, requesting clarification of three items on the Paramount Ridge Subdivision.

1. On page 11 of the Hearing Examiner Report it is recommended that the record be supplemented with written findings consistent with the provisions of RCW 58.17.110. Four proposed additional findings of fact were included. The letter from the applicant raises the issue that conclusions should also be included. The Hearing Examiner felt that the Conclusions of the Planning Commission adequately addressed the issues but that they failed to have specific written findings as stated in RCW 58.17.110.
2. On page 12, Condition #3 it should be noted that in line four the terms "substantially configured" should be "substantially reconfigured". The intent of this condition is not to remand the subdivision for "minor adjustments" due to meeting final engineering and planning standards. It is felt that the language as written with the correction on reconfigured is consistent with that intent.
3. On Page 12, Condition #5 the intent is that significant trees as well as trees under 12 inches in diameter, understory and ground cover would all be retained. The following sentence should be added to this condition to respond to the need to place utilities through the buffer area: "Where it is necessary that public drainage and utilities cross the buffer area, they shall be located in such a manner as to minimize their impact on the buffer, particularly significant trees, and disturbed areas shall be replanted according the City standards."

Clarification and additions made this 11th Day of January, 1999 to the report issued December 23, 1998.



Robert G. Burke, Hearing Examiner

EXHIBIT: Letter, Lynscot, A Corporation, Gary S. Cooper, President, December 31, 1998

Lynscot, A Corporation

20351 Greenwood Ave N
Shoreline, WA 98133

December 31, 1998

RECEIVED

DEC 31 1998

City Clerks Ofc.

Robert G. Burke, Hearing Examiner
City of Shoreline
7544 Midvale Ave n
Shoreline, WA 98133-4921

RE: Decision of Appeal, File No. 1997-01594

Dear Mr. Burke:

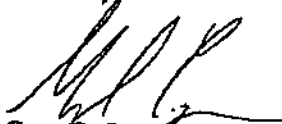
As representative of Creative Construction, the applicant of the above stated decision dated December 23, 1998, we are requesting clarification under Section IV. Recommendations and Decisions, pages 11 and 12 as follows:

1. On page 11 under the proposed additional findings of fact, we believe this should also contain conclusions and should be adopted by the City Council as findings of fact and conclusions.
2. On page 12, condition #3 states "...number of lots is reduced or substantially configured or the on-site drainage system is modified..." We believe this to mean if we do not obtain an easement to discharge the drainage from this site and we need to modify the drainage system, or reduce the number of lots, or substantially reconfigure the lots, this project would be remanded back to the Planning Commission. As you know, the drainage must be detained on-site and then released off-site through an easement and/or possibly pumped to 10th Ave NE. The preliminary drainage plans submitted to the City of Shoreline prior to the hearing will need to be corrected and modified to final engineering standards. Also, during this final engineering process, there is a possibility some minor adjustments to some lot lines may be required depending on location of the easement we obtain. Without clarification, we are concerned the statements made in this condition could be interpreted incorrectly by others, not allowing us to make these modifications or adjustments required by the City's Engineering and Planning during the normal final engineering process.
3. Condition #5 states "...all vegetation will be retained in the required 20 foot buffer..." We will be required to cross part of this 20 foot buffer for installation of the public drainage system and other utilities to the obtained easement. We are concerned this would prohibit us from installing the required public drainage system and utilities.

We would appreciate clarification of the above statements so we may proceed with the application for preliminary approval to the City Council.

Thank you for your time.

Sincerely,



Gary S. Cooper
President

**Attachment E Exhibits for the Closed Record Public Hearing Held by the
Shoreline Hearing Examiner on December 9, 1998:**

RECEIVED

SEP 22 1998

SEP 22 1998

City Clerks Ofc.

Copies to:

Tim Stewart

Bruce Disend

Anna Kolovsek

James Holland

CMO

BEFORE THE CITY OF SHORELINE

IN RE: APPEAL OF RECOMMENDATION
ON PRELIMINARY PLAT APPROVAL
AND DETERMINATION OF NON-
SIGNIFICANCE RE: PARAMOUNT RIDGE
SUBDIVISION

NOTICE OF APPEAL

FILE NO. 1997-01594

Introduction

Appellant Paramount Park Neighborhood Group, Inc., ("Appellant") hereby appeals the recommendation of the Planning Commission to approve the Paramount Ridge Subdivision preliminary plat. Additionally, Appellant appeals the Mitigated Determination of Non Significance ("MDNS") on the project, dated June 29, 1998.

Description of Appellants and How Impacted

Appellant is a not-for-profit corporation representing citizens concerned about environmental issues relating to Paramount Park, its hydrological and biological systems, and its surrounding ecosystem.

NOTICE OF APPEAL - 1

ORIGINAL

SMITH & LOWNEY, P.L.L.C.
1108 SMITH TOWER, 506 2ND AVENUE
SEATTLE, WA 98104
(206) 624-0893; FAX 624-3670

1 Appellant's members include neighbors living directly adjacent to or downstream of the
2 proposed subdivision, who will experience increased erosion and flooding if the subdivision is built.
3 In addition, the proposed subdivision will alter the quantity and quality of water flowing through
4 Littles creek, which flows through Paramount Park, creating negative environmental impacts to the
5 Park and its ecosystem and ultimately impacting Thornton Creek itself.
6

7 Statement Of Issues

8 I. Appeal of Determination of Non Significance.

9 The MDNS issued on the Paramount Ridge Subdivision was inadequate and contrary to
10 SEPA.

11 a. The proposed subdivision is likely to have a significant environmental impact on
12 local and downstream erosion and flooding, and other elements of the environment as defined by
13 SEPA, requiring the preparation of an Environmental Impact Statement ("EIS"). During the hearing,
14 Appellant provided unrebutted testimony as to the significant flooding and erosion problems in the
15 vicinity of the project site and downstream. Such flooding negatively impacts Paramount Park and
16 numerous individual members of Appellant. Additionally, the project, as proposed, will result in the
17 degradation of the quantity and quality of water entering riparian wetlands and anadromous fish
18 streams. For example, water quality will suffer due to discharge of sediments during construction,
19 and discharge of fertilizer, oil and other contaminants and stormwater from the project over the long
20 term. The loss of trees on the site will also have a significant environmental impact due to increased
21 threat of erosion, slope instability, and loss of water retention. A full EIS should be prepared to
22 analyze the impacts of this proposal.
23
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1 b. In issuing the MDNS, the City failed to sufficiently analyze impacts to the
2 environment, including but not limited to increased flooding and erosion. See WAC 197-11-330, -
3 335. Instead, the City has deferred analysis of these environmental impacts by allowing the analysis
4 of these impacts to be conducted sometime in the future. This is contrary to SEPA's requirement
5 that a DNS be based upon *actual* analysis of environmental impacts, See Norway Hill Preservation
6 and Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976), WAC 197-11-335, and
7 circumvents the public participation and accountability provisions of SEPA. Rather than conduct the
8 necessary analysis, the City bases its action on the assumption that there is sufficient capacity in the
9 downstream drainage system to handle the increased surface water from the subdivision, even
10 though that assumption is contrary to the un rebutted evidence presented at the hearing. In addition,
11 the City failed to analyze issues such as subsurface water flows, which are significant environmental
12 impacts raised at the hearing.
13

14
15 c. In issuing the MDNS, The City failed to consider likely direct, indirect, and
16 cumulative impacts of this proposal, including but not limited to the impact of other permitted and
17 planned developments on erosion and surface water management. See 197-11-060(4).
18

19 d. In issuing the MDNS and approving the subdivision, the City acts contrary to its own
20 codes related to environmental protection, which are incorporated into SEPA. These include codes
21 related to drainage, roads, flood hazards, subdivisions, and critical areas. For example, but not by
22 way of limitation, the City's code limits discharges of stormwater to pre-development volume and
23 velocity, and allows direct off-site discharge only where sufficient capacity in the downstream
24 system is known to exist. These provisions are violated by the proposal.
25
26

NOTICE OF APPEAL - 3

SMITH & LOWNEY, P.L.L.C.
1108 SMITH TOWER; 506 2ND AVENUE
SEATTLE, WA 98104
(206) 624-0893; FAX 624-3670

1 e. In issuing the MDNS, the City relied upon inaccurate information contained in the
2 SEPA checklist and accompanying reports, making meaningful environmental review impossible.

3 f. In issuing the MDNS, the City failed to properly consider all substantive
4 environmental policies and failed to require sufficient mitigation to bring the level of impacts of the
5 project below a level of environmental significance. For example, the project fails to mitigate for the
6 full impacts to surface water and flooding, and wetlands and wildlife habitat. Moreover, mitigation
7 that was required in the MDNS will be impossible to implement. For example, but not by way of
8 limitation, the Developer has been unable to obtain an easement through which to discharge
9 stormwater to the existing but wholly inadequate stormwater system. Without such an easement, the
10 subdivision cannot be built. The approval of the plat depended upon misrepresentations by the
11 developers and therefore provides justification for reopening the record to correct such
12 misrepresentations.
13
14

15 g. Neighborhood character also will be significant adversely affected by the project.
16 Currently, the neighborhood consists of detached single family houses on significantly larger lots
17 than those proposed in the subdivision. The new development will significantly affect the aesthetics
18 of the neighborhood and will lower property values. This compatibility issue should have been
19 considered under SEPA and the subdivision ordinance.
20

21 h. The physical configuration of the proposal will need to be altered to accommodate
22 necessary mitigation and environmental protection, probably requiring alteration of the layout and
23 number of lots, and the configuration of stormwater systems and utilities, and the potential effects of
24 the project. A proposal must be adequately defined to ensure proper environmental review. See
25 WAC 197-11-060.
26

NOTICE OF APPEAL - 4

SMITH & LOWNEY, P.L.L.C.
1108 SMITH TOWER; 506 2ND AVENUE
SEATTLE, WA 98104
(206) 624-0893; FAX 624-3670

1 i. When requiring mitigation as a condition of approval, the City is required to set forth
2 the policies on which the mitigation measures are based and the environmental impacts sought to be
3 mitigated. See Levine v. Jefferson County, 116 Wn.2d 575 (1991). The MDNS does not
4 specifically identify the significant environmental impacts that will occur as a result of the proposal.
5 Further, the MDNS does not analyze how such environmental impacts will be mitigated by the
6 proposed measures such that an EIS is unnecessary. Therefore, the MDNS does not demonstrate that
7 environmental impacts were considered and mitigated in a manner sufficient to comply with SEPA.
8

9 j. Appellants hereby incorporate by reference the concerns and issues identified in the
10 comment letter of its members.

11 k. The City has rightfully rejected the proposal for utilizing infiltration pits, as these
12 were demonstrated to have a significant environmental impact by requiring removal of trees,
13 violating buffer requirements, and increasing danger of flood, landslides and erosion. The proposal
14 for infiltration pits also violated the King County Surface Water Design Manual.
15

16 II. Preliminary Plat Approval.

17 In recommending / approving the subdivision proposal, the City acted contrary to the local
18 and state subdivision regulations, including RCW 58.17.110 and King County Code Title 19. For
19 example, but not by way of limitation, the following errors occurred:
20

21 a. The City failed to inquire into the public interest of the proposed subdivision or make
22 findings thereon as required by RCW 58.17.110, and the developer has not demonstrated public
23 interest as required by KCC 19.08.050.

24 b. The City approved the subdivision without requiring "appropriate provisions" for
25 items such as drainage ways, as required by RCW 58.17.110. For example, but not by way of
26

1 the City abrogated its responsibility by approving the subdivision *prior* to the submission of an
2 analysis of adequate downstream drainage capacity. By so doing, the City also violated the public
3 participation elements of RCW Chapter 58.17.

4 c. The City failed to comply with development regulations, including those related to
5 drainage and flood protection, erosion hazard zones and steep slopes. For example, but not by way
6 of limitation, the proposed drainage system is inconsistent with the King County Surface Water
7 Design Manual, which has been adopted by the City.

8 d. Appellant hereby incorporates the allegations relating to SEPA as if set forth herein.

9
10 **Authorized Representatives**

11 Smith & Lowney, P.L.L.C., and Knoll D. Lowney, are serving as authorized representative to
12 the Paramount Park Neighborhood Group, Inc.

13
14 Knoll D. Lowney
15 Smith & Lowney, P.L.L.C.
16 1108 Smith Tower, 506 2nd Avenue
17 Seattle, WA 98122
18 (206) 682-5958; fax 624-3670

19 **Relief Requested**

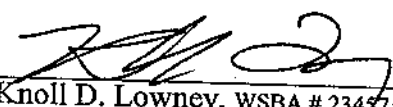
20 Appellants seek reversal of the MDNS and an issuance of a Determination of Significance
21 ("DS") requiring that an environmental impact statement ("EIS") be prepared. Appellants also seek
22 denial of the subdivision.
23
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25
26

NOTICE OF APPEAL - 6

SMITH & LOWNEY, P.L.L.C.
1108 SMITH TOWER, 506 2ND AVENUE
SEATTLE, WA 98104
(206) 624-0893; FAX 624-3670

1 Respectfully Submitted on this 22nd day of September, 1998.

2
3 SMITH & LOWNEY, P.L.L.C.

4 By 

5 Knoll D. Lowney, WSBA # 23457
6 Attorneys for Paramount Park Neighborhood
7 Group, Inc.
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NOTICE OF APPEAL - 7

SMITH & LOWNEY, P.L.L.C.
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SEATTLE, WA 98104
(206) 624-0893; FAX 624-3670

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NOV 06 1998

City Clerks Ofc.

SMITH & LOWNEY, P.L.L.C.

1108 SMITH TOWER
506 SECOND AVENUE
SEATTLE, WASHINGTON 98104
(206)624-0893, FAX (206)624-3670

November 6, 1998

Ruth Anne Rose
Deputy City Clerk
City of Shoreline
1744 Midvale Avenue, N.
Shoreline, WA 98133-4921

Subject: Paramount Park Appeal
File No. 1997-01594

Via Telefax 546-2200 / 524

Dear Ms. Rose:

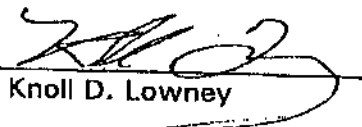
I have just been informed that the official record for appeal will not be finalized until Monday, the 9th of November, only days before Appellant's brief is due in the Paramount Park Subdivision Appeal. While I appreciate that this is a new process for the City of Shoreline, I hope the City will realize that it is unreasonable to require an appellant to submit a brief in a closed record appeal only days after receiving the record. As the City should be aware, the appeal brief will need to analyze the record and use the record as one basis for appeal. Thus, an appellant should have at least two weeks after receiving the record before the brief is due.

In this situation, as you know, the Appellant has retained me as their attorney. Prior to drafting our brief, both my clients and I will need to review the record. Thus, the delay in completing the record is prejudicing our appeal. For this reason, the City should delay the date for the submission of appellant's brief until two weeks after the record is prepared. I think this is reasonable. Also, I believe that providing the record only days before the brief is due would open the process to challenge, which nobody wants.

Thanks for your assistance, and I will look forward to hearing from you. I understand that you will forward this letter to the City Attorney and Hearing Examiner.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By: 

Knoll D. Lowney

cc: clients.

11/06/98 FRI 15:06 [TX/RX NO 60211]

NOV 6 1998

Exhibit C

From: Tim Stewart
To: Anna Kolousek, James Holland, Ruth Ann Rose, Sh...
Date: Fri, Nov 6, 1998 4:20 PM
Subject: Paramount Park Appeal

City Clerks Ofc.

The Paramount Park Appeal will be delayed as requested by Knoll Lowney in his letter of 11-6-98. I have spoken with his client Janet Way and left a voice mail for Mr. Lowney advising them of our action. James could you please prepare a memo to Ruth Anne, asking that she reschedule the hearing as part of the transmittal of the complete record to the Clerk's office on Monday. Tim

CC: Bruce Disend, Larry Bauman

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Page 1

NOV 9 1998

Exhibit D

From: James Holland
To: Ruth Ann Rose, Sharon Mattioli
Date: Mon, Nov 9, 1998 11:11 AM
Subject: Appeal of Paramount Ridge Preliminary Plat

City Clerks Ofc.

Dear Sharon,

Due to the complete record of the Paramount Ridge Plat not being directly available to the appellants (Knoll Lowney and Paramount Park Neighborhood Group), Planning and Development Services has determined that the closed record appeal hearing scheduled before the Hearing Examiner for November 18, should be canceled and rescheduled for a later date.

I would be very grateful if you could arrange for a notice of cancellation for this hearing to be published in the Seattle Times and the Shoreline Enterprise. If you would like me to draft the notice, just let me know.

I would also appreciate it if Ruth Ann could contact the Hearing Examiner and inform him of this decision, and also get some alternative (December?) hearing dates.

Please let me know how I can help you.

James

CC: Anna Kolousek, Sue Kurnik, Tim Stewart



Exhibit E

City of Shoreline

17544 Midvale Avenue North
Shoreline, Washington 98133-4921
(206) 546-1700 ♦ FAX (206) 546-2200

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NOV 9 1998

City Clerks Ofc.

November 9, 1998

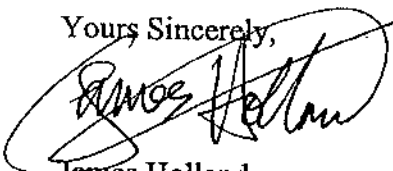
Robert G. Burke, President
10604 NE 38th Place, Suite 227
McConnell Burke, Inc.
Kirkland, Washington 98033

Re: Paramount Ridge Subdivision
Our File No. 1997-01594

Dear Mr. Burke:

During the Public Hearing on the Paramount Ridge preliminary Subdivision held by the Shoreline Planning Commission on July 30, 1998, Janet Way submitted a videotape for the Commission to review. The Planning Commission declined to view this tape as part of the hearing. Ms. Way has requested that we provide you with that tape which is enclosed.

Yours Sincerely,



James Holland
Senior Planner

JH/smk

Enclosure: Videotape (copy)

Cc: Bruce Disend, City Attorney (w/o enclosure)
Sharon Mattioli, City Clerk (w/o enclosure)
Ruth Ann Rose, Deputy City Clerk (w/o enclosure)
Janet Way (w/o enclosure)
Knoll D. Lowney (w/o enclosure)