



Marysville Hearing Examiner

March 13, 2008

7:00 p.m.

Marysville City Hall

CALL TO ORDER

Hearing Examiner Ron McConnell opened the hearing at 7:00 p.m.

ATTENDANCE

The following staff was noted as being present:

Ron McConnell, Hearing Examiner
Gloria Hirashima, Community Development Director
Craig Knutson, City Attorney
Chris Holland, Senior Planner
John Cowling, City Engineer
Amy Hess, Recording Secretary

PUBLIC HEARING

1. PA 06088 – Ironwood Court (FKA Spangler) – MDNS Appeal and Preliminary Subdivision.

Appellant: Lynn Eshleman
Pacific Ridge Homes, LLC

Appellant Contact: Duana Kolouskova
Johns Monroe Mitsunaga, PLLC

Applicant: Lynn Eshleman
Pacific Ridge Homes, LLC

Contact: John Mirante
Group Four, Inc.
16030 Juanita – Woodinville Way NE
Bothell, WA 98011
(425) 775-4581

Location: 5411 87th Avenue NE

Examiner's Introductory Statement

Hearing Examiner McConnell explained how the meeting would proceed. He then introduced Senior Planner Chris Holland and swore him in.

Staff Review:

Chris Holland, Senior Planner introduced Exhibit numbers 59-63. He gave a quick explanation of the project site, including lot size, location, borders, and zoning. He then went into a brief explanation of each exhibit. Exhibit 59 consisted of a Staff Memo regarding a change in the traffic mitigation fees to be paid to Snohomish County, as the previously given amount was incorrect due to number of lots changing. Staff recommends revising Condition #4 to read \$9,032.17 to be paid in traffic mitigation fees; Exhibit 60, an email regarding the WSDOT requirements for drainage into the SR 9 facility; Exhibit 61, the Pacific Ridge Homes Reply Brief, dated March 10, 2008; Exhibit 62, the Hearing Examiner Findings, Conclusions and Decisions in regards to the Kenley East Project to be used as a comparison project; and Exhibit 63, a Memo regarding condition #12 for the WSDOT storm water drainage plans.

Mr. Holland discussed the MDNS Staff Recommendations and the policies that were utilized in the Mitigation Measures. He again discussed Exhibit 62 which showed a previous project with similar conditions where the City enforced similar Mitigation Measures. Mr. Holland briefly touched on the Measures in question: Mitigation Measures numbers 2a regarding construction of a decorative concrete wall, 2b requiring the applicant to underground power lines along arterial streetscape streets, 2c requiring the applicant to construct storm water systems along arterial streets...with additional landscaping to screens visibility from roadways, and 3 which is required in order to mitigate the increase in vehicular traffic on 87th Ave NE.

Hearing Examiner McConnell reiterated that both sides had agreed on all but two of the Measures in question before turning over the floor to Duana Kolouskova, applicant attorney.

Public Comment:

None

Appellants Presentation:

Duana Kolouskova wanted to enter into record that she and her client had only received Exhibits 59-63 at the beginning of this meeting. She introduced her witness that would be contending the SEPA policies, John Mirante. Hearing Examiner McConnell swore the witness in.

John Mirante, Group Four, Inc. 16030 Juanita-Woodinville Way NE, Bothell WA 98011

Mrs. Kolouskova asked Mr. Mirante to explain his credentials and background with this project. He described his firm, noted that he is not an Engineer; he is a Planner by trade. He outlined his career with Group Four, his role in the Ironwood project, and the SEPA Conditions with regards to the Whiskey Ridge sub area. He stated that his role was to seek

out and inform his client of the potential environmental impact issues. Specifically he noted the storm water drainage ordinance and how this would impact the detention facilities volume, lot sizes, and quantity in the project site. He then discussed access requirements to these detention facilities. Mrs. Kolouskova questioned Mr. Mirante's knowledge of the sub-area standards and requirements at the time the applicant submitted their application, also when he found out about the SEPA requirements. Mr. Mirante stated that in 2006, he had no knowledge of the Mitigation Measures and their requirements.

Mr. Mirante then addressed Mitigation Measure # 2a and referred to the lack of clarity and parameters in regards to the wall referred to in this Mitigation Measure. He felt that the term "decorative" was too open for interpretation. Mrs. Kolouskova questioned Mr. Mirante as to whether they had any other documents in their possession that might clarify the specs necessary for the wall. He stated that they did not. He then stated that it was unclear as to what impact the construction of the wall was addressing and what the wall was intended to protect. Mrs. Kolouskova asked Mr. Mirante if, in his opinion, a wall was desirable in this type of project. He stated that he didn't believe that is was. Mrs. Kolouskova then questioned Mr. Mirante as to where and how the costs of the wall would be absorbed, would it be added to the cost of the homes? He answered that the costs for the wall would be included in the cost of the homes and therefore be passed on to the homebuyers. Mrs. Kolouskova stated that a wall of this type could be less or more desirable to the homebuyer depending on the location of the home purchased within this project. Mr. Mirante agreed. She then questioned whether or not any research had been done on the cost of the wall. Mr. Mirante stated that he had contacted a builder that he knew through his company about a 6' high wall. The builder informed him that he was probably looking at a wall closer to 15' high using pre fabricated sections of the wall and installing them on site for this type of project. The builder estimated that the cost of the wall would be approximately \$50.00 per face foot, and an additional \$10,000.00 for construction and installation. At 330' feet long, the wall would cost approximately \$275,000.00. Another estimate was discussed regarding a 10' high wall costing \$150.00 per face foot with a total cost of approximately \$450,000.00. This number equated to approximately \$10,000.00 per lot. Mrs. Kolouskova questioned whether this cost was proportionate to the impact. Mr. Mirante stated that he did not feel it was.

Next, Mrs. Kolouskova asked Mr. Mirante to address the undergrounding utilities concerns, costs, etc. Mr. Mirante described his experience in working with the City in the past on previous projects. Mrs. Kolouskova entered two new Exhibits into record. Exhibit 64, a collection of photos of housing projects presumably around the City of Marysville, and Exhibit #65 a flyer from the Neartown Properties project, also including photos. Mr. Mirante explained that Exhibit # 64 was a collection of recently completed projects within the City where the undergrounding of utilities along arterials was not required. He had worked on some of these projects himself and this requirement was not in place. Mr. Mirante referred to 20.24.200 of the MMC and SEPA policies arguing that the wording "within" the development is the key word in this requirement. He said that the applicant had every intention of undergrounding utilities within the development, but that there was no clear requirement to do so on the arterial frontage.

Mrs. Kolouskova questioned whether or not Mr. Mirante had seen Exhibit 62 prior to tonight and if he had any knowledge of the project it referred to. He stated that he had not seen this Exhibit before, but that, through staff discussion, he knew of the project known as Kenley East. Mrs. Kolouskova asked Mr. Mirante if there were any SEPA conditions in this project

according to the Exhibit. He responded that he did not see any and that they are typically listed at the top of this type of document. Mrs. Kolouskova responded by questioning whether or not this project was related to the subject at hand. Mr. Mirante stated that he did not believe there was any link in these two projects.

Getting back to the issue of undergrounding utilities, Mrs. Kolouskova asked whether or not any review or estimates had been done regarding this. Mr. Mirante explained that they had not because the applicant was not in control of this utility. Had any comparable costs been done, Mrs. Kolouskova asked? Mr. Mirante responded that he had contacted another contractor and was given the figure of \$145.00 per lineal foot, but this did not include connections or poles. He estimated that approximately \$650,000.00 would be the cost for both the construction of the wall and the undergrounding of the utilities.

In regards to the Mitigation Measure requiring storm water retention facility screening, Mrs. Kolouskova questioned what codes led Mr. Mirante to be aware of this requirement. Mr. Mirante referred to the Marysville City Code, but asserts that it is redundant because the applicant is already required to install a 5' Type E landscape buffer around such facilities. He added that it was unclear as to the difference between the MMC and the Mitigation Measure. Mrs. Kolouskova inquired as to anything Mr. Mirante had to add regarding SEPA policies. He stated that the screening of the visible ponds would be achieved by adhering to the code requirements. Mrs. Kolouskova stated that she had no further questions. She then brought up the Engineering Design and Development Standards or EDDS, and how the applicant would handle these. Mr. Mirante stated that they would have no problem complying with the EDDS. She then questioned why Mitigation Measure #3 was not acceptable, as these two requirements seemed to be the same. Mr. Mirante explained that the Mitigation Measure could limit design ability in reference to the spacing standards and that the current access point in the conceptual plan does not meet these requirements. He argued that the SEPA conditions do not allow access and that he did not want to have to redesign the access based on SEPA standards when the EDDS are already in place.

Hearing Examiner McConnell interjected that it sounded like the applicant was willing to accept Measure #3 if they could make it work, but unwilling to accept it if they could not make it work.

Lynn Eshleman, Pacific Ridge Homes, LLC, 17921 Bothell Everett Hwy, Bothell WA 98012

Ms. Eshleman was sworn in by Hearing Examiner McConnell. Mrs. Kolouskova asked Ms. Eshleman how she was involved in this hearing. Ms. Eshleman replied that she works for Pacific Ridge Homes. She was asked to confirm that she had heard Mr. Mirante's testimony, including the cost estimates. Ms. Eshleman indicated that she had, and reiterated that the \$150.00 per square foot of wall would construct a 10' wall for a total cost of \$450,000.00. Mrs. Kolouskova probed her for concerns with regards to this cost. Ms. Eshleman stated that her concern was that these requirements would increase the cost of the homes, making it difficult to stay competitive, also adding that she didn't feel the wall was a benefit since the project site is higher than the highway and that the buyers would be new residents and would know what they were getting into when they purchased these homes. In response to Mrs. Kolouskova's question regarding the importance of cost, Ms. Eshleman said that cost was a major concern because her company was targeting the average homebuyer market and if costs get too high, they cannot build houses here. Mrs. Kolouskova questioned whether or not Pacific Ridge Homes would have a problem

complying with codes. Ms. Eshleman stated that they had every intention of complying with all codes.

Mrs. Kolouskova had no further questions for witness Eshleman and proceeded with her closing statements. She began by addressing the substantive SEPA policies and that any mitigation must be based on an adopted SEPA policy. Second, a specific impact regarding a specific project must be identified in order to warrant a mitigation measure. Third, that mitigation measure must be proportionate to the impact identified.

Mrs. Kolouskova addressed what she thought the City Staff violations were. First, there were no pending exceptions, meaning that the city cannot enforce requirements based on what they might be planning or expecting to adopt in the future. Secondly, SEPA cannot nullify a project's rights. Lastly, she felt the Mitigation #2 had no SEPA policy supporting its elements. She said that the City has conceded that the need for Mitigation Measure #2 is based on cumulative impacts from the entire sub-area and that this is not the proper use of SEPA. She stated that the City has other options, including Municipal Code and Amendments to it, to implement these types of requirements. Mrs. Kolouskova asserted that the City had not utilized any of these powers regarding the three issues at hand, which include landscape screening, undergrounding of utilities, and the sound wall. She stated that the City had not adopted the Comp. Plan as a SEPA Code and that MMC 19.22.070 2Q sets forth the process of adopting and amending the Comp. Plan. The Comprehensive Plan is not a SEPA Substantive Policy and Staff continues to come back to other documents which are not SEPA Policies and therefore should not be discussed. As the City annexed before adopting or amending SEPA Policy, and did not adopt a sub area plan until 6 months after this site was annexed, her client cannot be held to these requirements. As a side note, Mrs. Kolouskova noted that Exhibit 62 is not a binding document in this case.

In Reference to Mitigation Measure #3, her client had no objection with compliance. There was a legal problem with it, however, she believed. Mrs. Kolouskova questioned why the EDDS standards and Mitigation Measure #3 both need to be enforced when they are requiring the same standards. She requested the removal of Mitigation Measures #2 and #3.

There was a short recess from 8:19 p.m. to 8:30 p.m.

Staff Presentations:

City Attorney Craig Knutson opened by explaining the process the City would take in presenting its case. He introduced Community Development Director, Gloria Hirashima, as his first witness.

Hearing Examiner McConnell swore in the witness.

Ms. Hirashima gave a brief description of her background, credentials, history with the City of Marysville, as well as her role as a SEPA Responsible Official. She gave an overview of her role in this project and made the point she is more of a supervisor as Mr. Holland and Mr. Cowling operate under her supervision. Ms. Hirashima explained her involvement with the Marysville Comprehensive Plan since its inception in 2005 and stated that she is very familiar with this document. She stated that the Comp. Plan was an ambitious one as the Urban Growth Area (UGA) expanded and that it identifies impacts and created

appropriate Mitigation Measures. Ms. Hirashima referred to page 4-98 of the East Sunnyside/Whiskey Ridge sub-area Plan and its reference to the intent to Master Plan the entire area. She said that this had been clearly stated throughout the entire process and was not a secret. Also, the City Council had included this intent for a Master Plan for the UGA expansion. Ms. Hirashima went in to the process by which the UGA Expansion was adopted and approved in 2006, and that the annexation hearings began in December of 2006. She stated that the intent to Master Plan was already in the works before the annexation was complete and that she believed that the applicant was aware of this as the City has made every attempt to inform property owners about the Master Plan.

Mr. Knutson questioned Ms. Hirashima about the applicant's knowledge of the Master Plan. She responded that it was actively discussed. She stated that the plan was discussed with heavy reliance on the SEPA Plan and read MMC 19.22.070 Section 2 Sequence Q which refers to how SEPA is used in the Comprehensive Plan.

Mr. Knutson asked how SEPA moved from the 2005 Comp. Plan to Addendum #9. Ms. Hirashima responded that the Comp Plan Addendum #9 was issued in 2005 and that the draft issued was in regards to the mitigation measures in question. Attorney Knutson then asked what the environmental review consisted of that is included in Exhibit 54. Director Hirashima responded that this document was a proposed plan, development regulations, and that it addressed the impacts identified. She stated that it discussed key concepts in the sub-area plan, elements critical in controlling environmental impacts, corridor treatment, arterial treatment, underground utilities, streetscape, etc. Concepts 12, 15, and 16 addressed the following impacts that were identified. Concept 12 addresses the aesthetic impacts, 15 addresses the noise and aesthetic impacts, and 16 addresses underground utilities in regards to aesthetic impacts. Each of these are significant environmental impacts and the mitigation measures regarding them are taken very seriously.

Mr. Knutson questioned if the key concepts identified had been applied elsewhere. Ms. Hirashima stated that they had been in new projects. She referred to Exhibit 62, the Hearing Examiners decision for the Plat of Kenley East. Mr. Holland interjected that Typolt West and Kenley East Projects had both been subject to these requirements.

Mr. Knutson then went on to question Ms. Hirashima about the sound wall requirements. She knew that the applicant had expressed concerns about the wall, and stated that there had been discussion of an alternative Mitigation Measure including a wood fence and landscape screening early in the process but that the applicant had been unwilling to compromise. She addressed another concern the applicant had regarding the undergrounding of utilities, Condition 2b. To implement this condition, the applicant would only have to underground across the street to the subdivision and that the street was scheduled to be reconstructed in the near future, making this task easier. As for the screening of storm drainage facilities, its purpose was clear: mitigate visual impact from the street.

Mr. Knutson asked Ms. Hirashima how the City determines what is acceptable in terms of how the applicant addressed these requirements. She replied that the applicant would submit a design and that the city would review it and respond accordingly. Ms. Hirashima asserted that the three Mitigation Measures being discussed are proportionate to the impacts. Gaining electrical access from across the street is necessary and Mr. Cowling would address Measure #3. She added that the SEPA Policy clearly states that the Comp.

Plan is a tool. Has substantive SEPA Policy been applied in the past, Mr. Knutson asked? Yes, the same format has been used in all projects and this is the first time Ms. Hirashima has seen this argument made. She stated that she agreed with Mr. Holland that the Substantive SEPA Policy is correct and that the City takes this very seriously, ensuring that they follow through.

Director Hirashima went on to discuss Exhibit 64 which had been introduced. She stated that the projects depicted in this Exhibit are not part of the Whiskey Ridge Master Plan area in question. Referring to Exhibit 44, the Petition for Annexation, it is stated that the development proposals must fall within the Master Plan Standards and further, that the applicant should have known that SEPA standards would apply. Exhibit 9 was then discussed, which is the SEPA checklist that was signed by Mr. Mirante on November 27, 2006 and received by the City on December 1, 2006. Item F of this Exhibit stated that the Environmental Review would take place. Mr. Knutson questioned whether this was a typical process of application, Ms. Hirashima replied that it was.

Hearing Examiner McConnell swore in City Engineer, John Cowling as the next witness.

Mr. Cowling gave an overview of his background with the City, his current position, and his role in the Ironwood Project. He discussed Measure 3 and that the standards limited access to the lowest volume roadways. Also, the safety concerns for workers and machinery needing to access the retention ponds for maintenance on arterials. Mr. Knutson questioned why this condition should be imposed. Mr. Cowling replied that the applicant needs to be prepared, as it is unlikely that a variance would be granted to change the access points. Mr. Knutson stated he had no further questions for Mr. Cowling.

Mr. Knutson introduced Exhibit 66, Appendix E of the Washington State Environmental Policy Act. He went on to discuss the policies in question and that they were in place well before, (2005) the application at hand was vested (December 1, 2006). Additionally, the environmental review that was undergone had become the basis of the conditions being argued. Attorney Knutson gave an overview of the relevance of Exhibit 66. In this Appendix, when there is ambiguity as to how to apply a specific policy, deference should be given to the entity.

The substantive SEPA policies cited in the second brief from the applicant as being cumulative impacts, were a limited holding, stated Mr. Knutson. The direct and specific impacts were identified in this case.

There was a recess from 9:52 p.m. to 9:59 p.m.

Applicant Comment:

Mrs. Kolouskova asked Ms. Eshleman if she had heard any discussion about a resolution of Mitigating Measures. Ms. Eshleman responded that she had, but before the second MDNS. The appeal was filed before the discussions with staff regarding concerns with SEPA standards. She stated that the Final MDNS stated that the applicant *shall* comply with the concrete wall standard and this was the language she and her company were not comfortable with. In regards to the discussion of a wood fence and vegetation as an alternative, she stated that her company wanted the East Sunnyside/Whiskey Ridge standards out of the MDNS Plan. Mrs. Kolouskova asked if a fencing and vegetation

combination to address noise was common, to which Ms. Eshleman responded that it was used quite often for this purpose. Her concerns were as follows to the Conditions set forth; A, the East Sunnyside/Whiskey Ridge language in the MDNS and that it referred to a concrete wall; B, the power line standards were too vague, and that they had based their design on a worst case scenario; and C, there are no guidelines as to screening for water retention facilities. She stated that it is not clear as to placement, and that there are no clear parameters. She and her company are concerned about the requirements and the language used and are not willing to accept the MDNS as is, largely the "decorative concrete wall" as it is an undue cost.

Mrs. Kolouskova stated that she had no further questions for witness Eshleman. Ms. Eshleman stated that she wanted to be able to work together to approve the project, but that she must look out for her company.

Mr. Mirante referred to the Environmental Checklist, Exhibit 9. He said that he did review and sign this document, but he was not sure where the Master Plan document wording had come from. He stated that there was no sub-area plan adopted at the time of the application, but that there was one in process. Mr. Mirante said that he had had correspondence with the City, but he did not receive any documents saying they would have to comply with the sub-area plan. He stated that there was no prior notice given that they would have to comply with these elements, thus he was unaware of that fact. Lastly, he wanted to make sure that there was a full set of plans, four sheets, for Mitigation Measure 3 on record.

Mrs. Kolouskova began her wrap up. She appreciated the Comprehensive Plan Adoption background Ms. Hirashima had provided. She referred to MMC 18.08.050 and the SEPA Policies addressed in that chapter. Further, in MMC 19.22.070, policies A-Z, the Comp. Plan is not referred to specifically, as is the case with the transportation plan. Additionally, that there is no ambiguity therefore no deference to person should be given. She referred to the Castle Homes Case in regards to the cumulative impacts and that these cumulative impacts are not a basis for SEPA Polices. Again, Mrs. Kolouskova stated that the Comp. Plan was not adopted as a SEPA Policy. She argued that Exhibit 44 had not been read in its entirety and that no sub-area plan was provided at the time of annexation.

Closing Statements:

Mr. Knutson responded to the Castle Homes Case. He stated that deference had been granted to the City in ambiguity, he pointed out two sections that were not codified. Page E-57, an explanatory section of the 1995 Statute, and page E-71 regarding consistency through land use and public analysis.

Mrs. Kolouskova argued that the language of the Comp. Plan and FEIS Mitigation Measure 2 had not been addressed.

Mr. Knutson agreed that these were concluded after the application was submitted, but did not see why these documents regarding East Sunnyside/Whiskey Ridge were objectionable.

Mr. Mirante stated that he would like to waive the presentation of the Plat since there was no public in attendance. Also that he objected to Condition 12, the WSDOT requirements for permits regarding storm drainage.

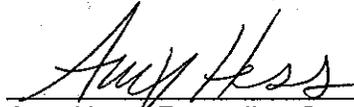
Mr. Holland referred to page 2 of Exhibit 60 and stated that he would like to add a condition to receive notice when approval was granted by WSDOT regarding storm drainage. Closing that the applicant had only to submit an application to WSDOT.

Mr. Mirante added that the language of Condition 8 was also a concern.

Mr. Knutson concluded that the most important legal basis for this case are the statutes that apply. These two statutes are the 1995 Washington State Environmental Policy Act, and amendments that were made to Comprehensive Plan. He stated that the applicant has ignored both of these statutes.

ADJOURNMENT

Hearing Examiner McConnell adjourned the meeting at 11:00 p.m. He stated that he would have his decision in a couple of weeks.



Amy Hess, Recording Secretary