

CITY OF BURIEN, WASHINGTON

RESOLUTION NO. 275

A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON,
ENTERING FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING APPROVAL OF THE REHABITAT NW SUBDIVISION

WHEREAS, the City of Burien Hearing Examiner conducted an open record public hearing on February 7, 2008 at which testimony from city staff, the applicant and public was heard regarding the preliminary plat approval of the Rehabitat NW Subdivision; and,

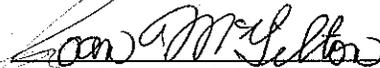
WHEREAS, on March 17, 2008 the Hearing Examiner made a recommendation to the City Council; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN,
WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council, having considered the Rehabitat NW preliminary plat application and the Hearing Examiner's recommendation, conditionally approves the Rehabitat NW preliminary plat and adopts the Hearing Examiner's findings and conclusions (Exhibit A), as fully incorporated herein as if fully set forth.

PASSED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON,
WASHINGTON, AT A REGULAR MEETING THEREOF THIS 21ST DAY OF APRIL 2008.

CITY OF BURIEN, WASHINGTON


Joan McGilton, Mayor

ATTEST/AUTHENTICATED:


Monica Lusk, City Clerk

Approved as to form:


Christopher Bacha, Interim City Attorney

Filed with the City Clerk: April 15, 2008
Passed by the City Council: April 21, 2008
Resolution No.: 275

**CITY OF BURIEN
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION**

APPLICANT: Rehabitat Northwest, Inc. for Binoit Prasad

CASE NO.: PLA 07-1574

LOCATION: South 170th Street & 1st Avenue South (See Exhibit A, Attachment 1)

APPLICATION: Request for approval of a preliminary subdivision of a 2.68 acre parcel into 13 single family residential lots (see Exhibit A, Attachments 2 through 9).

REVIEW PROCESS: Hearing Examiner conducts an open record hearing and makes a recommendation to the City Council, who then makes the final decision.

SUMMARY OF RECOMMENDATIONS

Staff Recommendation: Approve with conditions

Hearing Examiner Recommendation: Approve with conditions

PUBLIC HEARING

After reviewing the official file, which included the Staff Recommendation to the Hearing Examiner, and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Rehabitat NW application was opened at 1:00 p.m., February 7, 2008, in City Hall, Burien, Washington, and closed at 2:15 p.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the Community Development Department.

As noted below there were several errors found by staff after the Staff Recommendation to the Hearing Examiner was sent out to the Examiner and parties of record. In particular, several references indicated use of the 1998 King County Surface Water Design Manual, which should be the 2005 version; and references were made to the 1993 King County Road Standards, which should be the 2007 version. While not substantive in scope, they should be corrected so as not to introduce on-going confusion into the public record. Therefore, the Hearing Examiner requests that staff make all necessary corrections to Exhibit A prior to presenting this case to the City Council.

Hearing Comments:

The following is a summary of the comments offered at the public hearing.

From the City

Morgan Meyers, Project Planner: Summarized the details of the preliminary plat application (see Exhibit A and attachments). Ms. Meyers submitted Exhibit B, which is a memo correcting several errors made in Exhibit A, Staff Recommendation to the Hearing Examiner. She also noted that Public Works felt that the traffic analysis submitted was not specific enough as to impacts to intersections and surrounding street system, and that the applicant would be submitting a revised traffic analysis.

Stephanie Jewett, Planner: Clarified portions of the City's Critical Areas Ordinance, noting that Walker Creek was classified as a Type 2 stream, indicating a probable association with fish, and that there was no requirement that a separate wildlife assessment be performed in addition to the wetland/stream analysis in this case (see Exhibit A, Attachment 9).

From the Applicant

Chad Detwiller: Generally agreed with staff's analysis and recommendations, acknowledging that the traffic study should and will be updated. He noted that they were segregating the southern portion of the site to preserve the wetland/stream system, that they would be enhancing the buffer for habitat, and that they would like to use a split rail fence as a permanent demarcation of the buffer area. He also requested that instead of a fee-in-lieu open space payment that the possibility be left open for using the wetland/stream buffer for the open space requirement, that could include trail access off of 1st Avenue South.

Jane Vouget: Reiterated that they would like to keep the potential location of an open space trail flexible and open to discussion.

From the Community

Susan Dahl

Stephen Dahl

Thomas Jones

Michael Houston

Marlene Stone

Richard Hoit

Gary Wagner

John Merz

Pete Landry, Normandy Park

With the exception of the representative from Normandy Park, all the individuals listed above are adjacent neighbors, or live across South 170th Street opposite the proposed plat, or live within the immediate neighborhood. To varying degrees all expressed similar concerns that include the following:

- Traffic – concerns that South 170th Street is too narrow to accommodate the additional trips generated from 13 new residences; parking will overflow out onto South 170th Street negatively impacting neighborhood residents (some indicated

having problems already); additional turning traffic onto/off of 1st Avenue South would exacerbate an already unsafe intersection (noting posted speeds of 45 mph and no turn lane); similar concerns regarding the South 170th Street intersection with Ambaum Boulevard (noting a fatality accident); and generally increased congestion on the local street network. Several thought access should come directly off of 1st Avenue South as opposed to South 170th Street. Exhibit A, Attachment 10 is representative of these concerns.

- Critical Areas – concerns that the proposed subdivision will have negative impacts on the wetland and stream located at the south end of the site. Testimony suggests there is a diversity of wildlife that utilizes the stream and wetland on a regular basis, including heron and salmon that have apparently recently been planted in the stream (note that Exhibit A, Attachment 9, points out there are no barriers to fish from this stream reach to Miller Creek and on out to Puget Sound). Several people indicated that public open space and a proposed trail should not be allowed in the stream/wetland buffer area.
- Site Drainage – concerns over how site drainage will be impacted and ultimately handled. Several noted that the site is very wet during the rainy seasons and felt there could be risks to both new homes and properties immediately adjacent to the subdivision. The Dahls noted that grading work that had been done on the site had created additional surface flows onto their lot (see Exhibit A, Attachment 12). Others pointed out that run-off could carry sediment and pollutants into the wetland and stream.
- Quality of Life – concerns that the proposed density/lot sizes of the subdivision were not in character with the immediate neighborhood. For example, the Dahls noted the proximity of the proposed location of the house on Lot #5 was very close to a gazebo they had recently constructed in their back yard; and they would like to see the house located further west on the lot and a six foot high fence constructed by the applicant along the common property line (Note that the applicant indicated he would work with the Dahls on these issues). Mr. Jones and Ms. Stone noted that they lived directly across South 170th Street from the entry/exit of the subdivision and would be directly impacted by increased traffic and associated glare from headlights. As noted above, residents on South 170th Street were concerned about overflow parking. All had concerns regarding disruptions of the neighborhood during construction (worker parking, construction hours, truck traffic, noise and dust).

FINDINGS OF FACT AND CONCLUSION

1. The Facts presented in the Site Description on page 4 in Exhibit A, Staff Recommendation, January 22, 2008, accurately reflects the site circumstances, zoning requirements and land use, and are hereby adopted by reference.

2. The Fact and Conclusion regarding compliance with SEPA review on pages 7 & 8 in Exhibit A, Staff Recommendation, January 22, 2008, is accurate and hereby adopted by reference.
3. The Facts and Conclusions regarding compliance with Approval Criteria, specifically BMC 17.35.120.2 and RCW 58.17.110, on pages 8 & 9 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference; reiterating that compliance is contingent upon the applicant meeting all conditions of approval set forth in this recommendation.
4. The Facts and Conclusions regarding General Compliance with development regulations and Lot Size & Layout on pages 9 & 10 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate, with the exception noted below relative to lot sizes, and are hereby adopted by reference. Note that corrections made in Exhibit B apply here with respect to the use of the 2007 King County Road Standards.

The comment on page 10 of Exhibit A that all lots are in excess of the required minimum is not wholly accurate, since there is no specified minimum under BMC 19.40.230; which states that the lot averaging limitations found in BMC 19.15.005.2 and 19.15.010.4 do not apply in the context of clustering to preserve critical areas and their buffers.

5. The Facts and Conclusions regarding the Street Improvements, Access & Parking review on pages 10 through 12 in Exhibit A, Staff Recommendation, January 22, 2008, are generally accurate and hereby adopted by reference as part of the Hearing Examiner's facts and conclusions for these issues.

As noted above, neighbors expressed several concerns related to the increase in traffic resulting from the construction of 13 new residences, particularly the fact that South 170th Street is relatively narrow, a block long and located between two arterials (1st Avenue South and Ambaum Boulevard South). Both the Burien City Engineer and the City of Normandy Park (Exhibit A, Attachment 11) expressed concerns over the adequacy of the submitted traffic study (Exhibit A, Attachment 7), particularly with respect to the intersection of South 170th Street South and 1st Avenue South, the latter of which has posted speeds of 45 mph, making left hand turns into and out of South 170th potentially unsafe.

The City of Normandy Park has regulatory authority over 1st Avenue South and in 2004 completed several improvements in the immediate vicinity of the proposed plat. The Hearing Examiner requested that Normandy Park's representative at the hearing submit a memo to the Examiner expanding on their concerns and to respond to the suggestion that access to the site be directly from 1st Avenue South. This memo was received by the Examiner on February 13, 2008, and is entered here as Exhibit C.

- a) It was suggested that access to the plat be directly from 1st Avenue South, rather than South 170th Street S, thus eliminating the impacts to South 170th Street. City of Normandy Park road standards classify 1st Avenue South as a principal arterial with a required minimum spacing between intersections of 1,000 feet (Exhibit C).

Developing an additional intersection for the proposed subdivision would violate this standard, and presumably would not be approved by the City.

- b) It was also suggested that the intersection of South 170th Street and 1st Avenue South be improved in some fashion to eliminate or mitigate the danger of left turn crossing movements; again noting that posted speeds are 45 mph. The City of Normandy Park has indicated that the intersection does meet the safety standards for development as a controlled intersection at this time. They have suggested/requested that the applicant be required to extend the existing median strip north far enough to prevent traffic turning left into or out of South 170th Street, effectively making vehicular access a "right in/right out" only intersection. They note there is the Ambaum Boulevard alternative for south bound drivers (Exhibit C).
- c) The Hearing Examiner also left the hearing record open so that the applicants could respond to Exhibit C. The applicants' response was received by the Examiner on March 7, 2008, and is entered here as Exhibit D.

The applicants' question the conclusion that their project would create "significant additional traffic" through this intersection (see exhibit C). However, they have indicated the willingness to enter into a voluntary agreement with the City of Normandy Park to extend the median in 1st Avenue South. They have requested caveats to this proposal including not being held responsible for incidental damage to curbs, street surface, sidewalk and plantings; and that this would constitute the "full and final traffic mitigation required for this project". (see Exhibit D)

- d) Whether the traffic from an additional 13 residences is "significant" (Exhibit C) or "negligible" (Exhibit A, Attachment 7), the fact is there will be some additional traffic exiting and entering 1st Avenue South from South 170th Street, an intersection that all parties agree poses some potential for hazard. Since an access to the site directly from 1st Avenue South does not appear possible, then some form of controlling the most egregious potential hazard at South 170th Street; i.e. crossing left turns; is warranted. The proposal by both the City of Normandy Park and the applicants would essentially eliminate that situation.
- e) As noted by the City Engineer (Exhibit A, Attachment 6) and Normandy Park (Exhibit A, Attachment 11) there are deficiencies in the submitted traffic study (Exhibit A, Attachment 7). The applicant has acknowledged the traffic study needs to be updated. The proposal to extend the median in 1st Avenue South to restrict turning movements will presumably change the trip distribution to and from the site. Therefore, the traffic study should address the following items, which includes those already identified: trip distribution on the local road network, both with and without an extended median in 1st Avenue (South 170th Street, 1st Avenue South, Ambaum Boulevard South, South 174th Street); level of service (LOS) at effected intersections, both with and without an extended median in 1st Avenue (South 170th Street & 1st Avenue South, South 170th Street and Ambaum Boulevard South, Ambaum Boulevard South and South 174th Street, South 174th Street and 1st Avenue South);

existing traffic counts; stopping sight distances; and analysis to determine if any additional improvements may be required to improve safety and access.

6. The Facts and Conclusions regarding compliance the Utilities review on pages 12 & 13 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference.
7. The Facts and Conclusions regarding compliance Surface Water Management requirements on pages 13 through 15 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference.
8. The Facts and Conclusions regarding the Fee-In-Lieu of Recreation Space review on pages 15 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference.
 - a) At the hearing and in Exhibit D, the applicant has requested they be allowed to explore the option of meeting the open space requirement by developing a 4 foot trail within the required critical area buffer (see discussion below), which would presumably have some amenity such as a bench or open area for viewing, since there does not appear to be anywhere such a trail could connect to off-sit. This Examiner would recommend against this option. First, Walker Creek is a tributary of Miller Creek, which has been the focus of extensive planning, protection and restoration, and in turn flows to Puget Sound; and as noted in Exhibit A, Attachment 9, there are no blockages to fish migration to this stream reach. Second, the buffer is already being reduced from 100 feet to 75 feet based on an enhancement of buffer function (again, see discussion below). Third, human activity in protective buffers, which would likely include pets, is known to be disruptive to wildlife (see Department of Ecology website for materials on this issue).
9. The Facts and Conclusions regarding compliance with Tree Retention and Landscaping requirements on page 15 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference.
10. The Facts and Conclusions regarding the Critical Areas Evaluation on pages 16 & 17 in Exhibit A, Staff Recommendation, January 22, 2008, are accurate and hereby adopted by reference.
 - a) The application, as submitted, shows that all development activity will occur outside of the wetland/stream system and the associated buffer. Relative to stormwater management, Figures #3 and #4 in Attachment 6 of Exhibit A show that there is a topographic change mid-parcel. As proposed, all hard surface runoff is to be collected and routed north away from the critical areas; shown as the "North Basin" in the figures, and which will be the basin containing 90% of the developed area of the plat. The "South Basin" topography will remain essentially unchanged, and surface water will flow to the stream/wetland system. Having development located in the North Basin is intended to reduce any potential water quality impacts to the stream/wetland and associated buffer.

- b) Clustering development is allowed under BMC 19.40.230 on parcels containing critical areas. A 25% reduction of buffer widths is allowed under BMC 19.40.350.2.H in situations where additional protection of a critical area can be achieved through enhancement of an already degraded buffer area. The applicant is proposing reducing the required 100 foot buffer down to 75 feet, with the intent of restoring buffer functions through removal of invasive plant species/weeds, planting of trees and understory plants, and introducing structural elements such as large wood for increased habitat.
- c) BMC 19.40.170 and 19.40.190 establish the requirement for mitigation, maintenance and monitoring in conjunction with buffer reduction through enhancement, but provide little guidance as to how. A Mitigation and Monitoring Plan should be prepared and submitted by the applicant and should contain the following elements:
- Project Targets – identify what will be achieved by the specific mitigation action(s).
 - Project Standards – what standards (e.g. planting schedule: plant type/quantity/spacing) will be used in implementing the mitigation actions.
 - Success Criteria – how will success of the mitigation actions be measured? Example: better than 80% survival rate of new plantings in year 1, 3 and 5.
 - Adaptive Management – related to success criteria, outline contingencies tied to a five year monitoring plan that will be implemented in the event certain mitigation actions are not working. Example: replanting new vegetation when original plants have not survived.

Monitoring should be conducted over a five year period, with the site being visited twice a year near the beginning and end of the normal growing season. Weed and invasive plant removal should be an on-going mitigation action tied to the monitoring site visits. A brief report/summary should be submitted to the City each year of the monitoring period.

RECOMMENDATION

Based upon the foregoing findings and conclusions, it is recommended that the request for a preliminary subdivision be approved, subject to the conditions recommended on pages 2 through 4 of Exhibit A; with corrections noted in Exhibit B, and as modified below:

- 2.b: As a preferred alternative, negotiate and enter into an agreement with the City of Normandy Park to extend the 1st Avenue South median as discussed in Exhibits C and D. Prepare and submit a revised and updated Traffic Study. The traffic study should address the following items: trip distribution on the local road network, both with and without an extended median in 1st Avenue (South 170th Street, 1st Avenue South, Ambaum

Boulevard South, South 174th Street); level of service (LOS) at effected intersections, both with and without an extended median in 1st Avenue (South 170th Street & 1st Avenue South, South 170th Street and Ambaum Boulevard South, Ambaum Boulevard South and South 174th Street, South 174th Street and 1st Avenue South); existing traffic counts; stopping sight distances; and analysis to determine if any additional improvements may be required to improve safety and access onto and along South 170th Street.

2.g: Development of a trail in the critical area buffer for provision of project open space is not recommended for reasons outlined in Finding 8.a above. Pay a fee in lieu of providing 390 square feet of recreation space on the property for each of the 12 new lots. The fee shall be 390 x the current assessed value per square foot of the North Basin as depicted on Figure #4 of Attachment 6, Exhibit A.

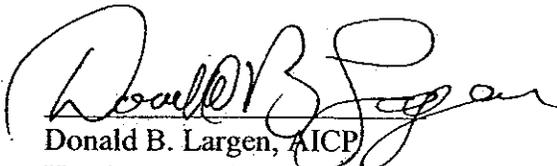
4.j: Prior to recording the final plat, a buffer mitigation, maintenance and monitoring plan shall be submitted for review and approval. The plan shall include the following:

- Project Targets – identify what will be achieved by the specific mitigation action(s).
- Project Standards – what standards (e.g. planting schedule: plant type/quantity/spacing) will be used in implementing the mitigation actions.
- Success Criteria – how will success of the mitigation actions be measured? Example: better than 80% survival rate of new plantings in year 1, 3 and 5.
- Adaptive Management – related to success criteria, outline contingencies tied to a five year monitoring plan that will be implemented in the event certain mitigation actions are not working. Example: replanting new vegetation when original plants have not survived.

Monitoring should be conducted over a five year period, with the site being visited twice a year near the beginning and end of the normal growing season. Weed and invasive plant removal should be an on-going mitigation action tied to the monitoring site visits. A brief report/summary should be submitted to the City each year of the monitoring period.

5. Prior to submittal of final plat lot layout the applicant will explore the possibility of locating the house on proposed Lot #5 further away from the east property line. The applicant will also provide a six foot high wooden fence along the east property line for a distance corresponding to the combined widths of proposed Lots #1 through #5.

Entered this 17th day of March, 2008.


Donald B. Lagen, AICP
Hearing Examiner

CITY COUNCIL REVIEW AND DECISION

The City Council will take final action on this application in accordance with the provisions of BMC 19.65.075.

JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for judicial review.

BMC 19.65.060 allows the city's final decision to be appealed by filing a land use petition in King County Superior Court. Such petition must be filed within 21 days after issuance of the decision, as provided in RCW 36.70C. Requirements for fully exhausting City administrative appeal opportunities must first be fulfilled.

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Staff Recommendation to the Hearing Examiner with attachments dated January 22, 2008.
- B. Corrections to Exhibit A submitted by Morgan Meyers, Consulting Planner dated February 7, 2008.
- C. Letter from the City of Normandy Park requested by the Hearing Examiner, regarding project access to 1st Avenue South, dated February 12, 2008.
- D. Applicants' response to Exhibit C dated March 6, 2008.

PARTIES OF RECORD

Chad Detwiller & Jane Vouget
Rehabitat Northwest
3601 West Marginal Way SW
Seattle, WA 98106

Benoit Prasad
1309 SW 128th
Burien, WA 98146

Susan & Stephen Dahl
17035 Ambaum Boulevard South
Burien, WA 98166

Marlene Stone
114 South 170th Street
Burien, WA 98166

Richard Hoit
150 South 170th Street
Burien, WA 98166

John Merz
17202 Ambaum Boulevard South
Burien, WA 98166

Community Development Department

Peter Landry, P.E.
Public Works
City of Normandy park
801 SW 174th Street
Normandy Park, WA 98166-3679

Thomas Haller Jones
104 South 170th Street
Burien, WA 98166

Michael Houston
127 South 170th Street
Burien, WA 98166

Gary Wagner
17225 Ambaum Boulevard South
Burien, WA 98166