

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

APPLICANT: City of Burien Public Works Department

CASE NO.: PLA 06-2022

LOCATION: West of the intersection at SW 142nd Street & 6th Avenue SW, on the south side of SW 141st Street. (see Exhibit A, Attachment 1)

APPLICATION: A request to develop an existing closed depression with no stormwater outlet into a storm infiltration pond/passive park (see Exhibit A).

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; and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Public Works application was opened at 10:57a.m., April 10, 2007, in the Educational Resource & Administrative Center, Burien, Washington, and closed at 11:25 a.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.

Hearing Comments:

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

From the City

Brad Medrud, AHBL, Consulting Planner: Described the project noting the need to develop the pond in order to address flooding problems in the immediate area. He noted that the project would require excavation of approximately 2,200 cubic yards of material. Mr. Medrud reviewed the City's approval criteria and explained that the project was considered a

public utility under the code, hence it was allowed within the subject zoning district (see Exhibit A).

From the Applicant

John O'Brian, Public Works: Discussed the details of the project and clarified that the work would increase the holding capacity of the "depression". He reviewed the proposed site plan noting the extensive landscaping and tree retention that were proposed to make the facility function also as a passive park setting. Mr. O'Brian noted that the shrubs around the perimeter of the site were chosen in part to control access to the site without use of fencing.

From the Community

Henry Willman, neighbor: Mr. Willman's primary concern was with the safety of neighborhood children during times when the holding pond would be full. He would like to see some form of perimeter fencing added to the project to restrict access (see Exhibit B).

FINDINGS OF FACT AND CONCLUSION

1. The Facts presented in the Site Description on pages 2 and 3 in Exhibit A, Staff Recommendation, March 21, 2007, accurately reflect the site circumstances, zoning requirements and land use, and are hereby adopted by reference.
2. The Facts and Conclusion regarding compliance with Approval Criteria on pages 4 and 5 in Exhibit A, Staff Recommendation, March 21, 2007, are accurate and hereby adopted by reference.
3. The Facts and Conclusions regarding compliance with Required Development Standards on pages 5 through 7 in Exhibit A, Staff Recommendation, March 21, 2007; specifically
 - Zoning Code page 5,
 - SEPA page 5,
 - Tree Retention page 6,
 - Landscape Requirements pages 6 and 7,
 - Critical Areas page 7;are accurate and are hereby adopted by reference.
4. Mr. Willman expressed concern over possible safety issues, with children accessing the site during the flooding season (see Exhibit B). He has suggested that additional access control through the use of some type of fencing would be appropriate. This concern is shared by the Hearing Examiner. While the plants chosen for the perimeter have been described as "unfriendly" (i.e. have some thorns), there is still opportunity for some uncontrolled access by younger children. Public Works should explore incorporating fencing in appropriate areas of the site perimeter and request the City Attorney to assess potential City liability relative to public access to this site.

RECOMMENDATION

Based upon the foregoing findings and conclusions, it is recommended that the request for the development of a flood control pond be approved, subject to the recommended conditions found on page 2 of Exhibit A, Staff Recommendation, March 21, 2007; and the following added condition:

4. Prior to the City Council hearing the Public Works Department shall provide the Council with site access control alternatives (e.g. fencing at strategic points of the perimeter) and have the City Attorney assess the City's possible liability if such controls are not incorporated into the project.

Entered this 20th day of April, 2007.



Donald B. Largent, 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 March 21, 2007.
- B. Letter from Henry Willman dated April 10, 2007.

PARTIES OF RECORD

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