

April 28, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REVISED DECISION ON APPEAL OF DENIAL OF CERTIFICATE OF TRAFFIC CONCURRENCY

SUBJECT: King County Department of Transportation File No. **99-06-28-01**

HEARTHSIDE HOMES
Appeal of Denial of Traffic Concurrency Application

Location: 21005/21023 – 132nd Avenue Southeast

Appellant: Rick Chapman, *represented by*
Chris Brown, P. E.
879 Rainier Avenue North #A-201
Renton, WA 98055

King County: Department of Transportation, Road Services Division,
represented by **Richard Warren**
201 South Jackson Street
Seattle, WA 98104-3856
Telephone: (206) 263-4713 Facsimile: (206) 263-4750

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant the appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	January 12, 2000
Hearing Closed:	January 12, 2000
Hearing Re-Opened:	April 7, 2000

The initial hearing on this appeal was held on January 12, 2000. On January 26, 2000, the Examiner issued his decision denying the appeal. A request for reconsideration was submitted by the Appellant, and the hearing was re-opened by the Examiner. The January 26, 2000 decision denying the appeal is hereby withdrawn, and this revised decision is issued in its place.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Traffic concurrency; unfunded critical link; technical error; alternative data; arbitrary and capricious

SUMMARY:

Applicant's appeal of a denial of transportation concurrency for a 58 lot plat is granted, and the application is remanded to the Department of Transportation for further consideration.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On June 28, 1999, Hearthside Homes, Inc. ("Appellant") submitted an application for a certificate of transportation concurrency for a proposed 58 lot subdivision. The King County Department of Transportation evaluated the application using its then most recent traffic model, designated R99A1. That model used 1995 base year data updated with all projects approved for concurrency from January 1995 to December 1998, and all road improvement projects funded for construction in the 1999 six-year Capital Improvement Program. The data is continuously updated by concurrency approvals as they are issued.

On August 26, 1999, the Department of Transportation advised the Appellant that the proposed development failed the unfunded critical link element of the transportation concurrency test. An "unfunded critical link" is a roadway critical to the zone's access which is not funded for improvement in the committed road network. Unfunded critical links are established by administrative rule. See KCC 14.65.020.C.1. and D.2. If a proposed development sends more than 30% of its peak hour trips to an unfunded critical link which will have a volume to capacity ratio of 1.1 or more (110% of road capacity), the concurrency test is failed.

2. The Appellant requested reconsideration by the Department of the August 26, 1999 denial of the certificate of concurrency. This request was supported by a professional traffic analysis which used operations analysis techniques consistent with the Highway Capacity Manual. Following reconsideration by the Department, the denial was affirmed. The Appellant timely appealed the denial to the King County Hearing Examiner.

3. The unfunded critical link to which the proposed development would send more than 30 percent of its traffic is South 212th Way, between the northbound ramps of SR 167 and 96th Avenue South. This road segment is one of the few arterial road connections between SR 167 and the Benson Highway (104th/108th Avenue Southeast). It serves the plateau east of Kent. The King County Department of Transportation projects the volume/capacity ratio of this critical link to be 1.14 in the year 2005. (A six year horizon is utilized by the Department in determining transportation concurrency).
4. The determinative issues to be decided on this appeal are whether the Department of Transportation committed technical error, inadequately considered alternative data submitted to the Department, or was arbitrary and capricious in making its decision that the volume to capacity ratio of South 212th Way will be 1.1 or more in the horizon year for this proposed development. See KCC 14.65.040. The Appellant's request for reconsideration presented to the Department (prior to the appeal to the Hearing Examiner), provided the Department with data and analysis which the Appellant requested be considered and used as a supplement or alternative to the Department's EMME/2 model analysis.

In its appeal to the Examiner, the Appellant asserted that the basis of the appeal was technical error, due to the differences in analytical techniques used by the Department and the Applicant's traffic engineer. During the presentation of evidence and argument, it ultimately became clear that, during the administrative process, the Department used only its data and operating assumptions (values) in running the traffic model. Because the Department has experience with and confidence in its processes, data and techniques, which are reasonably derived based upon accepted traffic planning principles and practices, the alternative data and values submitted by the Applicant, which were based upon specific analysis of the roadway in issue, were not considered by the Department.

5. The Department's determination of the eastbound capacity of South 212th Way during the P.M. peak hour was 2,160 vehicles per hour for the two eastbound lanes. The Appellant, in support of its position, has presented substantial evidence that the actual capacity of this critical link is significantly greater.

The Department of Transportation states that the capacity figure of 2,160 per vehicles per hour is, "the typical value used by KCDOT for the directional capacity of a 5-lane arterial with signalized intersections and no stop signs." (Letter dated March 24, 2000 from King County Department of Transportation in opposition to request for reconsideration.) The same document states, "the three major factors that determine this capacity are the number of lanes, a lane saturation flow rate of 1,900 vehicles per hour of green time, and a typical green time proportion of 50% for the arterial."

King County utilizes 32 link type capacity values in determining volume to capacity ratios. Exhibit No. 15. These capacity values are a critical part of the Department's traffic model, which is used to determine transportation concurrency for all proposed developments throughout unincorporated King County which are subject to the concurrency requirements. Typical values for all County arterials are grouped into 16 types which are used by the model. The data used by the model for the arterial type in issue assumes that the green time for peak direction traffic is 50% of the traffic signal cycle.

It is undisputed that the actual green time for the P.M. peak hour direction on the critical link here in controversy is 67% at the west end of the link and 74% at the east end.

6. The Department of Transportation acknowledges that there are alternative methods by which the traffic capacity of arterials, and actual levels of service, can be determined. The Department uses a planning methodology which is supported by professional opinion. The recommended link type capacity values were reviewed and recommended by KJS & Associates, a recognized traffic engineering firm, in 1995, and have been used by the Department in its current traffic model without being questioned. Because it is satisfied with the reasonableness of the model and values it uses, and believes that the Appellant has failed to show that its methodology was erroneous, the Department did not consider alternative methods of analysis or additional data provided by the Appellant for the purpose of determining the actual capacity of the arterial link in issue.

CONCLUSIONS:

1. Substantial deference should be given to the Department of Transportation in its determination of traffic concurrency. The Department of Transportation is charged with administration of the integrated transportation program as set forth in Chapter 14.65 KCC. The Department is staffed with personnel having technical proficiency in traffic planning, and is experienced in the administration of the program.

The Appellant has the burden of showing that the Department of Transportation erred in a manner comprehended by at least one of the grounds for appeal set forth in KCC 14.65.040. Grounds which may be considered within the scope of this appeal are: (1) that the Department committed a technical error; (2) that alternative data submitted to the Department was inadequately considered; and, (3) that the action of the Department was arbitrary and capricious.

Although the Appellant was reluctant to assert the grounds for this appeal in the language of the code, each of these 3 grounds is clearly within the scope of the facts set forth in the appeal statement.

2. The provisions of the King County Code concerning transportation concurrency management should not be read to allow a determination to be made that an unfunded critical link has a volume to capacity ratio of 1.1 or more, based upon "typical" link type capacity values, when there is substantial evidence that the typical values used in running the Department's traffic model are not pertinent to the link in issue. To conclude otherwise would render meaningless the opportunity afforded applicants to submit alternative data.

The Appellant has convinced the Hearing Examiner that there is substantial information concerning the capacity of this critical link during the P.M. peak hour which is not accounted for in the typical link type capacity value assigned by the Department of Transportation. It was error by the Department to not consider the additional information presented by the Applicant concerning the actual capacity of the link, particularly the actual percentage of green time per cycle and other roadway and vehicle usage characteristics. This failure constitutes technical error, inadequate consideration of alternative data, and was arbitrary and capricious.

3. The application for certificate of traffic concurrency should be remanded to the Department of Transportation for re-evaluation of the failure to meet the critical road link requirement with respect to South 212th/208th Street (South 212th Way), from the northbound SR 167 ramps to 96th Avenue South. The final determination of passage or failure should take into consideration the actual capacity of this critical link, based upon the best available information pertinent to the link in issue rather than the use of generalized link type capacity values.
4. This decision applies to this link and this application only. It is not intended to imply a need to alter the Department's traffic concurrency model or typical recommended link type capacity values, when they are used in the absence of alternative data presented by an applicant which demonstrates that the use of typical values would lead to an inaccurate result for a specific application.

DECISION:

The decision by the Hearing Examiner issued January 26, 2000 is withdrawn. The appeal of the denial of Transportation Concurrency Application No. 99-06-28-01 is granted, and this matter is remanded to the King County Department of Transportation for further consideration pursuant to the foregoing conclusions.

ORDERED this 28th day of April, 2000.

James N. O'Connor
King County Hearing Examiner

TRANSMITTED this 28th day of April, 2000, to the following parties and interested persons:

Chris Brown, P. E. 879 Rainier Ave. S. #A-201 Renton, WA 98055	Richard Warren KCDOT MS-KSC-TR-0813	Kenneth Ott 21005 – 132 nd Ave.S.E Kent, WA 98042
Rick Chapman 2911-1/2 Hewitt Ave. #6 Everett, WA 98201	Dick Etherington KCDOT MS-KSC-TR-0813	Jerry Sommerman 21023 – 132 nd Ave. SE Kent, WA 98042
Ho-Chuan Chen KCDOT Technical Services Division MS-KSC-TR-0813	David Mark KCDOT Comprehensive LR Planning MS-KSC-TR-0813	

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding appeals of transportation concurrency. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance

99-06-28-01-Hearthsde Homes

6

of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JANUARY 12, APRIL 7 AND APRIL 14, 2000 PUBLIC HEARINGS ON KING COUNTY DEPARTMENT OF TRANSPORTATION FILE NO. 99-06-28-01 – HEARTHSIDE HOMES:

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were David Mark, Richard Warren, Dick Etherington and Ho-Chuan Chen. Participating in the hearing and representing the Applicant were Chris Brown and Rick Chapman. Other participants in this hearing were Jerry Sommerman and Kenneth Ott.

The following exhibits were offered and entered into the record on January 12, 2000:

- | | |
|---------------|--|
| Exhibit No. 1 | Notice of Transportation Concurrency Application Denial, #99-06-28-01, dated 8/26/99 |
| Exhibit No. 2 | Statement of Appeal and various attachments, 1-35, dated 12/16/99 |
| Exhibit No. 3 | KCDOT Transportation Concurrency Denial staff report, File No. 99-06-28-01 |
| Exhibit No. 4 | Series of papers submitted by Chris Brown, pages 1-18 |

The following exhibits were offered and entered into the record on April 7, 2000:

- | | |
|----------------|---|
| Exhibit No. 5 | Request for Reconsideration, dated February 14, 2000 |
| Exhibit No. 6 | King County Department of Transportation response to Request for Reconsideration |
| Exhibit No. 7 | Chapter 11 of the Highway Capacity Manual |
| Exhibit No. 8 | Faxed transmission from King County Department of Transportation, dated April 6, 2000 |
| Exhibit No. 9 | Computed Evaluation of Intersection Performance |
| Exhibit No. 10 | Excerpts from book "Transportation Engineering" |
| Exhibit No. 11 | Excerpt from Highway Capacity Manual, 1965 edition |
| Exhibit No. 12 | Excerpt from current edition of Highway Capacity Manual |
| Exhibit No. 13 | Excerpt, "Measurement Relationships for Uninterrupted Flow" from current edition of Highway Capacity Manual |
| Exhibit No. 14 | Graph (curve) from Highway Capacity Manual |
| Exhibit No. 15 | Table "King County Recommended Link Type Capacity Values" |

The following exhibits were offered and entered into the hearing record on April 14, 2000:

- | | |
|----------------|--|
| Exhibit No. 16 | Highway Capacity Manual, 1998, 3 rd edition excerpt |
| Exhibit No. 17 | Calibration and Adjustment of System Planning Models, December 1990 |
| Exhibit No. 18 | Mr. Sommerman's written statement of witness testimony, dated April 12, 2000 |
| Exhibit No. 19 | Exhibit No. 8 with highlighted annotations and attached page, submitted by Chris Brown. |
| Exhibit No. 20 | Highway Capacity Manual, 1994, sections of Chapter 7 |
| Exhibit No. 21 | Six-year traffic computations done by Chris Brown |
| Exhibit No. 22 | Letter to James N. O'Connor from Chris Brown, dated April 14, 2000 |
| Exhibit No. 23 | Traffic count data from three different intersections, dated July, 1999, done by Chris Brown |