

August 26, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL.

SUBJECT: Department of Development and Environmental Services File No. **L97P0042**

BROOKS VILLAGE
Preliminary Plat Application

Location: West of Renton Avenue South and north of 116th Street
(11433 Renton Avenue South)

Applicant: Michael H. Trower
Covenant Housing Association
2077 East Howe
Seattle, WA 98112

Engineer: Robert Foley & Associates, Inc.
4020 East Madison, Suite 335
Seattle, WA 98112

SUMMARY OF RECOMMENDATIONS:

| | |
|---------------------------|---|
| Department's Preliminary: | Approve, subject to conditions |
| Department's Final: | Approve, subject to conditions (modified) |
| Examiner: | Approve, subject to conditions (modified) |

PRELIMINARY MATTERS:

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| Application or petition submitted: | October 6, 1997 |
| Notice of complete application: | November 3, 1997 |

EXAMINER PROCEEDINGS:

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|-----------------|-----------------------------|
| Hearing Opened: | August 20, 1998, 9:30 a.m. |
| Hearing Closed: | August 20, 1998, 11:10 a.m. |

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 ADDRESSED:

- Bicycle routes
- Road improvements
- Road standards
- Wetlands

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

FINDINGS:

1. General Information.

| | |
|----------------------------|--|
| Owner/Developer: | Michael H. Trower Covenant Housing Association 2077 East Howe Seattle, WA 98112 |
| Engineer: | Robert Foley & Associates, Inc. 4020 East Madison, Suite 335 Seattle, WA 98112 |
| Architects: | Mithun Partners 414 Olive Way, Suite 500 Seattle, WA 98101 |
| Location: | West of Renton Avenue South and north of 116th Street (11433 Renton Avenue South) |
| STR: | NE 11-23-04 |
| Zoning: | R08 PSO |
| Acreage: | 14.3 acres |
| Number of Lots: | 57 |
| Density: | 4 dwelling units per acre |
| Lot Size: | Ranges from approximately 1,940 to 7,600 square feet |
| Proposed Use: | Attached housing |
| Sewage Disposal: | Skyway Water & Sewer District |
| Water Supply: | Seattle Public Utilities (City of Seattle) |
| Fire District: | King County Fire District #20 |
| School District: | Renton School District #403 |
| Complete Application Date: | November 3, 1997 (Application filed October 6, 1997) |

2. **Proposal.** Covenant Housing Association (the "Applicant") proposes to subdivide a 14.3-acre parcel in the Skyway area into 57 lots for attached (zero-lot-line) dwellings. With lot sizes ranging from approximately 1,940 square feet to 7,600 square feet, the proposed development will achieve a proposed density of approximately four dwelling units per acre, consistent with both the minimum and maximum density standards of the R-8 zone classification. The property

contains significant wetland which will not be developed. In order to achieve the proposed lot configuration, the Applicant requests permission to "average" wetland buffer areas in the manner described by County Sensitive Area regulations.

The proposed development is described by the preliminary plat drawing that is entered in this hearing record as Exhibit No. 7; and which is reduced and attached to the Department of Development and Environmental Services (hereinafter, the "Department", or "DDES") Preliminary Report to the Hearing Examiner dated August 20, 1998 (Exhibit No. 2).

3. **SEPA.** An Environmental Impact Statement is not required. On July 3, 1998, the Department issued a Mitigated Threshold Determination of Non-Significance (MDNS). That is, the Department issued its determination that -- based on its review of the relevant environmental documents -- the proposed development would not cause probable significant adverse impacts on the environment; Provided, that the wetland and wetland buffer areas will be separated from areas to be developed by using permanent information signs and four-foot-high split rail fencing. That determination was posted on the subject property and published as required by law. No one appealed.
4. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat of Brooks Village, subject to the 22 conditions of final plat approval contained on pages 8 through 12 of the Department's Preliminary Report to the Examiner (Exhibit No. 2), modified as follows:
 - a. **Well Abandonment.** A domestic well is located on Tax Lot No. 86 abutting the subject property. The Applicant has agreed to connect that property owner to the domestic water obtained from Seattle Public Utilities. The State Department of Ecology has promulgated standards and procedures for well abandonment. In its additional recommended Condition No. 23, the Department recommends that the Applicant be required to follow State DOE rules regarding well abandonment.
 - b. **Off-Site Improvements.** Recommended Condition No. 9.e requires an off-site walkway extending southward along the west side of Renton Avenue South to 68th Avenue South. In response to concerns raised by the Applicant, the Department recommends adding the following sentence: "The design of the walkway shall be reviewed and approved by DDES and King County Department of Transportation." The Applicant's response to this requirement is indicated below.
 - c. **Bioswale Location; Buffer Averaging.** The Applicant has proposed locating a required bioswale within the wetland buffer area located in the vicinity of proposed Lot Nos. 49 through 51. In Recommended Condition No. 8.c., the Department recommends removing the bioswale "outside of the wetland and associated buffer". The Applicant expresses willingness to modify the plan to some extent, but also asks for permission to "buffer average" in accordance with adopted Sensitive Areas regulations. In its final recommendation, the Department agrees to the buffer averaging request.
5. **Applicant's Response.** The Applicant accepts the Department's recommendation as described in Finding No. 4, above, except that the Applicant disagrees with the Department's unwillingness to provide for greater design flexibility for two required improvements: a) the off-site walkway

discussed in Finding No. 4.b, above; and b) the Recommended Condition No. 9.e requirement to provide a bike lane along the Renton Avenue South frontage.

In each case, the Applicant argues that topography may render the required ancillary improvements unfeasible or economically impractical. In response to these concerns, the Department observes that Recommended Condition No. 9.h provides "Modifications to the above road conditions may be made in conformance with the variance provisions of the 1993 King County Road Standards." In other words, DDES is saying that the appropriate way to gain relief from potentially onerous road improvement standards must be through the King County Department of Transportation variance procedures, not through the Hearing Examiner.

6. **Neighboring Property Owner Concerns.** Two neighboring property owners participated in this review. Both expressed concern about "growing wetlands" in the area. Another expressed concern regarding the closeness of her home to South 116th Place Street right-of-way (which is required to be developed consistent with King County Road Standards by the Applicant).

- a. **Wetlands.** Both neighbors assert that the wetlands in this vicinity have enlarged since installation of public sewers in the area several years ago. The Department's Engineer, Bruce Whittaker, agrees that such a water diversion, as a result of sewer line installation, is conceivable or possible. However, he adds, there is insufficient evidence in this review to clearly determine that has happened in this case. The Applicant's engineer testifies that his study of the site suggests that, indeed, the wetlands have grown at some time during the period. However, he continues, there is no evidence that they are still growing.

But what if they are still growing? What protection is provided for purchasers of Brooks Village homes? Wetland boundaries, setbacks and buffers are established to respect the 100-year flood boundary, with only a 1% chance of occurrence in any given year. Thus, he explains, a considerable safety factor is built into the plat design to protect future home owners.

Finally, the hearing record shows that the drainage from this development will be directed *away from, not toward*, the existing wetlands on the subject property and abutting properties.

- b. **South 116th Street.** The subject property, at its south boundary, is divided from the neighboring one-acre Evelyn Radosevich property by South 116th Street right-of-way. This right-of-way has existed, according to Exhibit No. 9 and Department testimony, since 1934. It is necessary to develop a portion of this existing 30-foot-wide public right-of-way as South 116th Street, a cul-de-sac street serving proposed Lot Nos. 49 through 56. It will be necessary to use the entire right-of-way to develop this cul-de-sac street consistent with King County Road Standards.

Unfortunately, the Radosevich home, constructed approximately 1934, (an estimate Ms. Radosevich learned from others), is located only two feet south of the 116th Street South right-of-way. This is a sub-standard condition inasmuch as it fails to meet either side yard or front yard setback standards established by King County zoning. However, this problem was created 60 or more years ago and certainly before adoption of current zoning regulations. Thus, the Radosevich home is legally "grandfathered" into this sub-

standard setback situation.

Now, however, actual development of the right-of-way by this Applicant will make the situation more obvious. Worse, it will introduce the traffic from eight new lots onto this right-of-way previously used only by (apparently) Radosevich. It is particularly relevant to note that the sub-standard setback was not created by the Applicant. The Applicant has nonetheless expressed some willingness to provide fencing or minimal landscaping as a way of softening the impact of the increased traffic. However, Ms. Radosevich is not at this time inclined to accept such improvements.

Hearing participants also discussed the possibility of moving the sidewalk from the north side of 116th right-of-way to the south side, thereby increasing the setback between the Radosevich home and moving automobiles. However, Ms. Radosevich, at the time of hearing, was not prepared to respond to that idea. Also, she could see some merit in keeping the sidewalk on the north side of the right-of-way where, among other things, it would better serve pedestrians from the proposed Brooks Village development.

7. **Department's Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated August 20, 1998 (Exhibit No. 2) are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.

CONCLUSIONS:

1. Regarding flexibility for King County Road Standard-related improvements such as the site walkway and frontage bike lane, the Department is correct. There are variance procedures established by the KCRS. These variance procedures, which involve the County Road Engineer and the King County Department of Transportation Roads Division, should be followed in the event that it becomes necessary to modify these required improvements.
2. Although the drainage concerns of neighboring property owners are valid concerns, they do not appear to be relevant to this proposed development, particularly due to the fact that drainage from the proposed development will be routed generally north to northeast *away* from the wetlands of concern. At the same time, it is worth noting that Recommended Condition Nos. 7, 8, 15 and 17 offer an effective program for managing drainage and wetlands. These conditions should be adopted, implemented and enforced.
3. The concerns of the southerly abutting neighbor, Ms. Radosevich, may be addressed through engineering review and need not "mini-managed" through the public hearing review process.
4. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.

5. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
6. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
7. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.

DECISION:

The preliminary plat of BROOKS VILLAGE, as generally described by Exhibit No. 7, is APPROVED; SUBJECT to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-8 zone classification. All lots shall meet the minimum dimensional requirements of the R-8 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code. Requirements shall apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
- c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

- 8. The following conditions specifically address drainage issues for this particular plat:
 - a. A debris barrier per the 1990 King County Surface Water Design Manual shall be installed on the existing cross culvert under Renton Avenue South (near the northeast corner of the site). This requirement may be waived as determined by DDES during engineering plan review.
 - b. The King County Water and Land Resources Division (WLRD) is considering a regional stormwater detention facility, utilizing the existing wetlands on and adjoining the site. WLRD and DDES may consider alternative retention/detention design or monetary contribution to a regional facility for this subdivision. WLRD and DDES shall approve any alternative retention/detention design prior to engineering plan approval.
 - c. The bioswale proposed in the vicinity of Lots 49-51 shall be removed and relocated outside of the wetland and associated buffer. This may result in the reconfiguration and/or loss of lots. As an alternative, buffer averaging may be considered during engineering plan review.
- 9. The following road improvements are required for this subdivision to be constructed according to the 1993 King County Road Standards:
 - a. Roads A and b shall be improved to the urban subaccess standard.
 - b. C Place shall be designed as a private access tract according to Section 2.09 KCRS.
 - c. South 116th Street shall be improved to the urban minor access standard.
 - d. Frontage: Renton Avenue South shall be improved to the urban minor arterial standards with provisions for a bike lane.
 - e. Offsite: An offsite walkway along the west side of Renton Avenue South shall be provided from the south property line to 68th Avenue South (per KCRS). Walkway design shall be reviewed and approved by DDES and KCDOT.

- f. Twelve feet of additional right-of-way for Renton Avenue South shall be dedicated along the west property line, allowing 42 feet of right-of-way from centerline. This may result in the reconfiguration and/or loss of lots.
 - g. As specified by KCRS 5.03, street trees should be included in the design of all road improvements.
 - h. Modifications to the above road conditions may be made in conformance with the variance provisions of the 1993 King County Road Standards.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: 1) pay the MPS fee at final plat application, or 2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application, and a note shall be placed on the face of the plat stating: "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid". If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. There shall be no direct vehicular access to or from Renton Avenue South from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
13. Lots 19-24 shall have undivided ownership of C Place and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat.
14. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
15. Preliminary plat review has identified the following specific sensitive area requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the Applicant:
- a. The Class II wetlands shall have a buffer width of 50 feet, measured from the wetland edge. Buffer averaging may be employed, so long as the total amount of the buffer area on site is not reduced and better resource protection is achieved.
 - b. The wetlands and their respective buffers shall be placed in Sensitive Area Tract(s) (SAT).
 - c. A minimum building setback line of 15 feet shall be required from the edge of the SAT.
 - d. A final enhancement/mitigation plan must be submitted for review and approval by DDES along with the engineering plans for this proposal. The plan must include proposed final grades, hydrology, construction and monitoring notes and a detailed

