

October 30, 2009

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **A09F0008**

WESTBROOKE DEVELOPMENT, LLC

Revised Fee Estimate

Location: 38005 – 42nd Avenue South

Appellant: Westbrook Development, LLC
represented by **Kurt Wilson**
P.O. Box 73790
Puyallup WA 98373
Telephone: (253) 539-8116 or (253) 848-0820
Email: kurt@soundbuihlhomes.com

King County: Department of Development and Environmental Services (DDES)
represented by **Molly Johnson, Ray Florent and Bruce Engell**
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Deny the appeal

Department's Final Recommendation:

Deny the appeal

Examiner's Decision:

Deny the appeal

SUMMARY OF DECISION:

The appellant's appeal of a DDES fee estimate revision is denied.

ISSUES/TOPICS ADDRESSED:

Reasonableness of fee estimate revisions for additional time to review significant tree retention plan and surface water design drainage elements of site engineering plans.

EXAMINER PROCEEDINGS:

Hearing opened: October 22, 2009
Hearing closed: October 26, 2009

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.

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

FINDINGS:

1. On June 18, 2009 DDES transmitted a revised fee estimate for review of the Westbrooke Plat, DDES file No. L08SR019, to the Plat applicant. The stated basis for the revised fee estimate was that the applicant failed to provide accurate, complete or timely information for the review of the final plat.

The specific fee estimate revisions made on June 18, 2009 added 15 hours (\$2,100) to review multiple submittals and infiltration issues as part of the site engineering review, and eight hours (\$1,120) to review multiple plan revisions of the significant tree retention plan.

2. On June 23, 2009, the applicant, represented by Kurt Wilson, submitted to DDES its written dispute of the revised fee estimate, requesting that the additional fees be removed. The applicant disputed the amount of time estimated for completion of the review of the tree retention plan, and the 15 hours to review the infiltration design for individual lots. The applicant also asserted that review of the infiltration design should occur at the time building permits are submitted for individual lots. Additionally, a redesign of the retention pond requested by DDES was an erroneous requirement that resulted in \$10,000 of wasted effort by the applicant's engineer.
3. The applicant's dispute of the revised fee estimate was reviewed by DDES. The department's decision on the dispute was mailed to the applicant on June 29, 2009. The department's decision denied the applicant's request that the additional time be removed. Justification for the department's decision was based upon multiple submissions of the engineering plans and the significant tree retention plan for the plat, which have required multiple DDES reviews. (See exh. no. 15)

On July 15, 2009, Westbrooke Development LLC submitted a timely notice and statement of appeal of DDES's revised fee estimate.

4. Westbrooke's statement of appeal asserts that DDES has not provided specific information to support the fee estimate, and that "DDES has also failed to provide accurate, complete or timely responses, which should bar DDES from asserting the same against the applicant with respect to its submittals."

Additional questions and comments are directed to the specific bullet points contained in the DDES response (exh. 15). (See statement of appeal, exh. 32). The Appellant's questions and comments claim that the DDES dispute response provided generalities, that DDES made errors and was inefficient in its review of the Appellant's submittals.

5. Pursuant to KCC 27.50.030, the Hearing Examiner conducts a closed record hearing on an appeal of a fee estimate or estimate revision. The burden is on the applicant to demonstrate from evidence in the record that the disputed estimate is unreasonable.
6. DDES has provided to the Hearing Examiner the record of its actions concerning the review of the plans for this subdivision which it considers to be relevant to this appeal. No additional documents were submitted by the appellant.
7. There were five submissions of the significant tree retention plan for this subdivision. The Applicant's plans repeatedly failed to provide information required by code and requested by DDES in its plan reviews. The number of tree plan submissions upon which the initial fee estimate was premised was two or three. Eight hours is not an unreasonable time to estimate for the review of two additional iterations of the tree plan, and to engage in the oral and written communications associated with the additional reviews.
8. Engineering plans for surface water runoff control facilities for the proposed plat are dependent upon on-site infiltration of runoff from each developed lot within the lot. The feasibility of on-site infiltration on each of the lots has not been demonstrated by the presentation of sufficient soils information on the plans submitted to date. Although three sets of engineering plans have been submitted by the Appellant for review, sufficient information to enable DDES to complete its review is still not available from the Applicant. The estimate of an additional 15 hours for review of at least one additional set of plans, is not unreasonable.

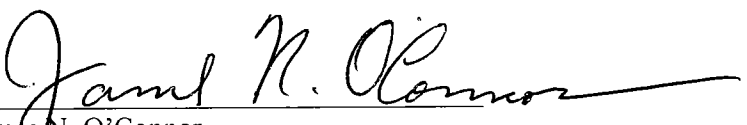
CONCLUSIONS:

1. The Appellant has not demonstrated that DDES's June 18, 2009, fee estimate revision is unreasonable. Therefore, pursuant to KCC 27.50.030, the decision by the director to deny the Appellant's dispute of the revised fee estimate should be affirmed.
2. The Applicant has the opportunity, pursuant to KCC 27.50.050, to appeal the final billing to be received from DDES when action on this development has been completed.

DECISION:

The appeal by Westbrooke, LLC, of the June 18, 2009, revised fee estimate is DENIED.

ORDERED this 30th day of October, 2009.


James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

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 DDES permit fee estimates and billings. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance 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 OCTOBER 22, 2009, PUBLIC HEARING ON THE FEE APPEAL OF WESTBROOKE DEVELOPMENT, LLC, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A09F0008

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Ray Florent and Bruce Engell representing the Department and Kurt Wilson and Steve Browning representing the Appellant. At the conclusion of the October 22 argument, the Examiner continued the hearing for administrative purposes to provide an opportunity for the Appellant to review and comment upon a package of exhibits presented by Bruce Engell. On October 23 the Office of the Hearing Examiner received an email from the Appellant that he did not have any objections to the materials being submitted.

The following Exhibits were offered and entered into the record on October 22, 2009:

Exhibit No. 1	Department of Development and Environmental Services (DDES) "Chronology of SDS (Site Development Services) Review Time"
Exhibit No. 2	Printouts of Permits Plus database entries for Westbrooke Plat permit no. L08SR019
Exhibit No. 3	Printouts of Findtime billing database entries for Westbrooke permit
Exhibit No. 4	First submittal by Westbrooke routed to Site Development Services (SDS)
Exhibit No. 5	Second submittal routed to SDS and DDES's first responses
Exhibit No. 6	Third submittal by Westbrooke and DDES's second responses
Exhibit No. 7	Fourth submittal by Westbrooke and DDES's third responses
Exhibit No. 8	DDES's January 5, 2009 review comments
Exhibit No. 9	Emails between Bruce Engell of DDES and Joshua Beard, RLA on behalf of Westbrooke, regarding trees and soils plan review
Exhibit No. 10	Email from Bruce Engell to Wylie Wong regarding budget overages, dated May 4, 2009
Exhibit No. 11	Emails between Bruce Engell, Ray Florent, Pete Dye, Doug Dobkins, Randy Sandin and Molly Johnson, regarding tree plan retention review, dated from March 26, 2009 to July 23, 2009
Exhibit No. 12	Email from Bruce Engell to Pete Dye, Doug Dobkins and Molly Johnson regarding approval of tree, soil and bonding plans, dated June 17, 2009
Exhibit No. 13	Revised fee estimate, dated June 18, 2009
Exhibit No. 14	Emails between Bruce Engell, Ray Florent, Molly Johnson, Doug Dobkins, and Wendy Gallagher regarding budget overages, dated June 24 and 25, 2009
Exhibit No. 15	DDES (Randy Sandin) response to fee dispute, dated June 29, 2009
Exhibit No. 16	Approved significant tree retention, soils amendments and bonding plans
Exhibit No. 17	October 19, 2009 statement of Bruce Engell regarding additional review time
Exhibit No. 18	Resume of Bruce Engell

Exhibit No. 19	DDES Financial Policies Protocol, Document Code No. FIN 11-1 (PR)
Exhibit No. 20	June 23, 2009 Dispute (appeal) by Kurt Wilson of June 18, 2009 Revised Fee Estimate
Exhibit No. 21	DDES staff report to the Hearing Examiner for the Westbrooke fee appeal, file no. A09F0008

The following Exhibits were offered and entered into the record on October 22, 2009 and entered into the record on October 26, 2009:

Exhibit No. 22	List of proposed additional exhibits submitted by Bruce Engell
Exhibit No. 23	History of clearing and significant tree retention regulations
Exhibit No. 24	Copy of selected KCC code sections, with handwritten annotations
Exhibit No. 25	Email string from Bruce Engell regarding Tree retention and vegetation management plans
Exhibit No. 26	Directions on significant tree retention and soils amendments for plats CAO
Exhibit No. 27	Copy of King County Code regarding significant trees
Exhibit No. 28	DDES Information bulletin "Achieving the Post-construction Soil Standard", dated January 1, 2005
Exhibit No. 29	Significant tree/soil amendments bond quantity worksheet
Exhibit No. 30	Notes for testimony by Bruce Engell

The following Exhibit was received on October 23, 2009 and entered into the record on October 26, 2009

Exhibit No. 31	Email from Kurt Wilson to the Hearing Examiner concerning proposed additional exhibits
Exhibit No. 32	Notice and Statement of Appeal submitted July 15, 2009

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