

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 26-227

AFFIRMING THE DECISION OF THE HEARING EXAMINER,
REVERSING IT IN PART, AND
ADOPTING THE FINAL DECISION WITH MODIFICATIONS
IN THE CLOSED RECORD APPEAL OF STILLWATER PRESERVE RB,
FILE NO. 25-101010 PSD

WHEREAS, applicant and appellant Stillwater Preserve LLC (Stillwater) applied to Snohomish County for a preliminary 14-lot rural cluster subdivision on a 52.82 acre parcel in the R-5 zone; and

WHEREAS, the Hearing Examiner held an open record hearing on February 10, 2026, and left the record open for limited purposes, including receiving additional information from Stillwater and the Department of Planning and Development Services (PDS) regarding safe walking conditions for school children; and

WHEREAS, the Hearing Examiner issued a decision on March 24, 2026, approving the preliminary rural cluster subdivisions with conditions; and

WHEREAS, conditions of approval included Condition 44, which requires Stillwater to construct off-site pedestrian facilities along 211th Ave SE from the development on 52nd St SE to the currently assigned school bus stop at Dubuque Road, or to some other location that has been accepted by the school district and the County; and

WHEREAS, on April 6, 2026, Stillwater filed an appeal of the March 24, 2026, decision of the Hearing Examiner to the County Council under SCC 30.72.070 challenging Condition 44; and

WHEREAS, the County Council held a closed record appeal hearing on May 26, 2026, to hear argument from Stillwater and parties of record and consider the appeal issues; and

WHEREAS, at the closed record appeal hearing the County Council heard argument from Stillwater on the appeal issues and no other parties of record presented argument; and

WHEREAS, the County Council requested additional information from Stillwater, PDS and Public Works and continued the closed record appeal hearing to May 29, 2026, in order to receive and consider the requested additional information;

NOW, THEREFORE, ON MOTION:

Section 1. The Snohomish County Council incorporates the foregoing recitals as findings and makes additional findings of fact and conclusions, pursuant to SCC 30.72.120(1), as set forth below and in Section 2:

A. The state subdivision statute, RCW 58.17.110 and county code SCC 30.41A.100 sets out criteria for approval of subdivisions and dedications, and includes factors which must be considered when determining whether appropriate provisions are made for the public health, safety and general welfare and the public interest will be served by the subdivision and dedication.

B. RCW 58.17.110(2) also provides that: "No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property."

C. Council finds that in this instance, the Examiner erred in finding that a condition of approval with the effect of requiring the applicant to construct 2,700 feet of off-site improvements was proportional to the development's impacts based on substantial evidence in the record.

D. However, Council finds that an alternative condition requiring adequate space for a school bus stop and bus turnaround in connection with the construction of the new public road 52nd Street SE serving the development is proportional, and will still ensure that the subdivision makes adequate provisions for the public health, safety and general welfare, and that the public interest will be served by the subdivision and dedication.

Section 2. The County Council enters its decision in the case of Stillwater Preserve RB, File No. 25-101010 PSD, as follows:

The County Council hereby affirms the March 24, 2026, Decision of the Hearing Examiner approving the preliminary rural cluster subdivision subject to conditions, reverses in part the Hearing Examiner's decision to require off-site pedestrian facilities to the school bus stop at Dubuque Road or to some other location as stated in Condition 44, and adopts the final Decision of the Hearing Examiner, including all findings and conclusions, with the following modifications:

A. On Page 14, lines 11-25 are amended as follows:

Stillwater also requested approval of a deviation from EDDS regarding the off-site pedestrian pathway PDS required for schoolchildren to meet their buses.³⁰ The Snohomish School District advised that schoolchildren currently residing off of 211th Ave SE meet their buses at the intersection of 211th Ave. SE and Dubuque Road (Ex. H.3). ~~((Schoolchildren))~~ If school children from the development will meet their buses at the intersection of 211th Ave. SE and Dubuque Road, ((requiring them)) they would be required to walk south on the new private road to the new public road of 52nd St. SE and then north on the public road of 211th Ave. SE. The new private road and 52nd St. SE will be built to current county road standards and will provide adequate pedestrian paths for schoolchildren. 211th Ave. SE is older, not built to current standards, and lacks an adequate pedestrian path. Stillwater proposed a separated pedestrian facility on one side of 211th, a low volume road with a posted speed limit of 25 mph. Woods Creek Bridge (no. 48150) crosses 211th and lacks a pedestrian facility. Woods Creek Bridge is flat, horizontally straight and has clear sight lines of 300 feet to the south and 150 feet to the north. Three homes exist south of the bridge. The new Stillwater subdivision will result in total of 17 homes south of the bridge. Instead of building a new pedestrian bridge across Woods Creek or rebuilding the existing bridge, Stillwater proposed installation of signage and illumination at the bridge. The County Traffic Engineer approved the deviation, conditioned on providing signing and illumination.³¹ Stillwater may still choose to construct a separated pedestrian facility on 211th Ave SE, subject to EDDS deviation, but it is not made a condition of preliminary subdivision approval. See discussion at Part F.7.c.

B. On page 15, lines 15-26 are amended as follows:

The development cannot be approved unless school children have safe walking conditions.³³ The Snohomish School District advised that schoolchildren ~~((from the development))~~ currently residing off of 211th Ave SE would meet their buses at the intersection of 211th Ave. SE and Dubuque Road (Ex. H.3). 211th Ave. SE lacks a pedestrian pathway. Stillwater represented that it would install a detached pedestrian pathway along 211th Ave. SE in its application materials (Ex. A.1) and PDS therefore recommended conditioning approval of the subdivision on construction of an adequate pedestrian path along 211th Ave. SE from the intersection of new public road 52nd St. SE north to Dubuque Road, approximately half a mile. Stillwater requested a deviation from EDDS regarding Woods Creek Bridge that represented it would install a detached pedestrian pathway.³⁴

Stillwater now contends the off-site pedestrian pathway lacks sufficient nexus and is disproportionate because it may cost approximately \$300,000. Stillwater also argues that state law and county code require off-site pedestrian pathways for children who "walk to school" and walking to a bus stop is not subsumed within that term.

C. On page 16, lines 9-20 are amended as follows:

With respect to proportionality, ~~((the Hearing Examiner finds the estimated cost of \$300,000 is proportional to the potential harm to be mitigated. The out-of-pocket medical expenses of a pedestrian/vehicle collision can easily exceed \$300,000, and future care and lost income also can easily exceed \$300,000 that amount. Note, too, that the new residences of the subdivision will be sold to homeowners, and the homeowners will bear most, if not all, of the cost of the pedestrian pathway in the purchase price of the home.))~~ Stillwater also argues that the off-site walkway is disproportionate because few students walk on 211th or will do so in the future. Future use is speculative because it is difficult to predict with any certainty the number of school-age children who will reside in the new development. It is also speculative as to whether the School District will maintain only the current bus stop at Dubuque Road if school-aged children are residing in the development and enrolled in School District schools. ~~((With respect to the current number of school bus pedestrians, the off-site pathway requirement is not due to the current number of school-age children walking on 211th to meet their school bus but due to Stillwater's desire to build and sell 14 new homes.))~~ Proportionality involves a fact-specific inquiry in which the County must demonstrate that the condition is roughly proportional to the development's anticipated impacts and cannot rely on speculation regarding the impacts or mitigation of them. In this case, the evidence in the record is not sufficient to support a requirement for a half mile of off-site improvements to the current school bus stop location that may change locations following the construction of the new homes in the development or for some other reason. Such a requirement for the purpose of benefiting the school children who may reside in the development is not proportional to the development's construction of 14 new homes. However, a requirement to construct facilities to accommodate a future school bus stop and bus turnaround in closer proximity to the development site in connection with the construction of the new public road 52nd Street SE serving the development is more narrowly tailored to the impacts of the development. A school bus stop located closer to the development would also result in safer walking conditions for resident school children of the development, if utilized by the School District.

D. On page 16, lines 21-26 are amended as follows:

The Hearing Examiner concludes the public interest is not served by a development that does not have safe pathways for schoolchildren to walk to their bus stops. The

Hearing Examiner cannot approve the preliminary subdivision unless it will "serve the public interest and makes appropriate provision for the public health, safety, and general welfare" SCC 30.41A.100. The subdivision does not make appropriate provision for public health, safety, and general welfare unless children can safely go to school. A requirement to construct the new public road 52nd Street SE serving the development in a manner that will accommodate a future school bus stop and turnaround for the school-aged children residing in the development will create a safe pathway for school children to walk to a bus stop location that is proportional to the impacts of the development.

E. On page 17, lines 3-6 are amended as follows:

SCC 30.41A.100(1) (2006) (emphasis added).³⁵ ~~((Having considered all relevant facts, including the characteristics of the site, the current location of the bus stop, and the characteristics of 211th St. SE, the Hearing Examiner determines the public interest will not be served by a subdivision that does not have an adequate, safe pedestrian path to the children's school bus stop.))~~

F. On page 17, lines 15-17 are amended as follows:

Approval will therefore be conditioned on installation of ~~((an off-site pedestrian pathway to the school bus stop at Dubuque Road and 211th or such other location as mutually agreed by the Snohomish School District, Stillwater, and the county))~~
adequate facilities to accommodate a school bus stop and school bus turnaround at or near the new public road 52nd Street SE serving the development and made available for future use by the School District.

G. On page 20, after line 11, insert new Condition 13(f):

f. Revised civil plans that show adequate facilities to accommodate a school bus stop and school bus turnaround at or near 52nd Street SE for review and approval by the county.

H. On page 25, line 9, Condition 44 is amended to read:

44. ~~((Pedestrian facilities shall have been constructed to the reasonable satisfaction of the county from the subject development on 52nd St SE to Dubuque Road or other location that has been accepted by the Snohomish School district and Snohomish County.))~~ Necessary facilities for a school bus stop and school bus turnaround at or near 52nd Street SE shall have been constructed to the satisfaction of the county. Any

necessary easements for the facilities shall have been recorded with the County Auditor.

DATED this 2nd day of June 2026.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the Council