



Snohomish County Council

3000 Rockefeller Ave., M/S 609
Everett, WA 98201-4046
(425) 388-3494
www.snoco.org

MEMORANDUM

TO: Snohomish County Council
FROM: Deb Evison Bell, Senior Legislative Analyst
DATE: October 5, 2022
SUBJECT: Appeal of Hearing Examiner Decision: Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Development Standards Administrative Site Plan for two commercial lots and one tract of 286 townhomes (File # 21-107654 SPA/BSP)

Purpose

This memorandum provides an overview of the closed record appeal hearing scheduled for October 5, 2022, under the provisions of [Chapter 30.72](#) of the Snohomish County Code (SCC).

The record for the council's consideration of this appeal is limited to that which was before the Hearing Examiner and written argument timely filed with the council. Issues on appeal are limited to those raised by the appellant that are within the jurisdiction of the council. At the hearing, the council will take oral argument pertaining to the existing record. No new testimony will be taken, and no new evidence or exhibits will be accepted unless specifically requested by the council and related to the issues raised in the appeal.

A closed record appeal is a quasi-judicial hearing and councilmembers must abide by the appearance of fairness doctrine, codified in [Chapter 42.36](#) of the Revised Code of Washington (RCW).

The Development Application

Pacific Ridge-DRH, LLC (Pacific Ridge) proposed a binding site plan to create two commercial lots and one tract of 286 townhomes, a Planned Community Business (PCB) preliminary plan for two commercial buildings and 286 townhomes, and an Urban Residential Design Standards (URDS) administrative site plan. Pacific Ridge proposed that the URDS administrative site plan be consolidated with the binding site plan and PCB preliminary plan for review by the Hearing Examiner.

The proposed subdivision is a single undeveloped track of land consisting of approximately 31 acres, with one stream (Garden Creek) and ten wetlands identified. The property to the west and north is zoned Light Industrial and developed with a county maintenance facility (Cathcart). Property to the south and east is zoned R-5 (Residential) and developed with residences. Property to the southwest is zoned R-9,600 (Residential) and is developed with residences.

Timeline

April 21, 2021	Pacific Ridge – DRH, LLC applied for approval of: (1) a binding site plan to create two commercial lots and three tracts; (2) a Planned Community Business preliminary plan for two commercial buildings and 286 townhouse dwellings; and (3) an Urban Residential Design Standards administrative site plan. Planning and Development Services (PDS) deemed it to be a complete application for purposes of review for compliance with applicable requirements.
November 30, 2021 April 15, 2022	Pacific Ridge submits revised materials to PDS.
May 11, 2022	PDS issues a State Environmental Policy Act (SEPA) threshold Determination of Non-Significance (DNS) (H.E. Exhibit E.1).
May 11, 2022	PDS issues a combined public notice for an open record hearing, SEPA threshold determination, concurrency determination and traffic mitigation (H.E. Exhibits E.1, F.3 and F.4)
May 11, 2022	PDS issues public notice of application by publication, posting, and mail to residents within 1,000 feet of the project site.
June 14, 2022	The Hearing Examiner began the open record hearing and left the record open until the close of business on June 14, 2022, for emailed public comment for those who did not or could not comment during the live hearing.
June 26, 2022	Party of Record Deborah Wetzel requests to re-open the hearing (H.E. Exhibit Z.6).
July 7, 2022	The Hearing Examiner issues original decision, approving the preliminary Planned Community Business plan, binding site plan, and Urban Residential Design Standards administrative site plan subject to conditions. The decision includes a denial of the request to re-open the hearing.
July 11, 2022	PDS petitions for reconsideration to amend error in mitigation fees to be paid by applicant. (H.E. Exhibit M.1)
July 18, 2022	Party of Record Deborah Wetzel petitions for reconsideration (H.E. Exhibit M.3 with exhibits 1 - 8).
July 18, 2022	Party of Record Janet Miller petitions for reconsideration (H.E. Exhibit M.4).
July 19, 2022	The Hearing Examiner issues Order Regarding Parties of Record, granting Parties of Record Katrina Stewart and Mickie Gundersen until July 29 to file a petition for reconsideration (H.E. Exhibit N.1)
August 8, 2022	The Hearing Examiner issues Order Granting and Denying Petitions for Reconsideration (granting petition by PDS and denying petitions by Deborah Wetzel and Janet Miller) and issues an amended decision consistent with the order (H.E. Exhibit N.3)

August 15, 2022	Party of Record Katrina Stewart submits motion for reconsideration (H.E. Exhibit M.12 with exhibits 1(a) - 7).
August 18, 2022	The Hearing Examiner issues an order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition (H.E. Exhibit N.6).
August 22, 2022	Appellants Katrina Stewart and Deborah Wetzel file notice of an appeal of the July 7, 2022, Decision of the Hearing Examiner, the August 8, 2022, Order Granting and Denying Petitions for Reconsideration, and the August 18, 2022, Order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition (Council Exhibit AA.1).
August 31, 2022	Snohomish County Council dismisses Appellant issues 5.5 and 5.6 pursuant to SCC 30.72.075 (Motion 22-365).
September 12, 2022	Council receives written arguments by parties of record; Applicant Pacific-Ridge-DRH, LLC requests summary dismissal of issues 5.1 and 5.4.
September 19, 2022	Council receives rebuttal argument from Appellants.
September 28, 2022	Snohomish County Council passes an oral motion at the 9:00 am General Legislative Session reserving its decision on summary dismissal of issues 5.1 and 5.4; stating it will only consider exhibits 1-8 of Deborah Wetzel's motion for reconsideration to determine whether that motion and request to reopen the hearing were properly denied; and stating it will not consider or include in the record exhibits 1-8 and exhibit 10 to Linda Gray's written argument.
October 5, 2022	The Snohomish County Council is scheduled to conduct a quasi-judicial closed record appeal hearing.

Planning & Development Services Staff Recommendation

On April 21, 2021, PDS issued a staff recommendation (H.E. Exhibit L.1) of conditional approval of the Planned Community Business preliminary site plan, binding site plan, and Urban Residential Development Standards administrative site plan. On June 14, 2022, an updated staff recommendation was issued (H.E. Exhibit L.2) to correct an error on page 2 that misidentified the appropriate Sewer Service (Silver Lake Waster and Sewer District) and to provided updated information related to concurrency and traffic impacts.

The Hearing Examiner Decision

The Snohomish County Hearing Examiner held an open record hearing on June 14, 2022. The Hearing Examiner left the record open until the close of business on June 14, 2022, for emailed public comment for those who did not or could not comment during the live hearing. Based on the comments received, the written record, and applicable law, the Hearing Examiner issued a decision on July 7, 2022. The decision stated the Hearing Examiner considered exhibits A.1 through L.2 and the testimony of the witnesses at the open record hearing. On August 8, 2022,

the Hearing Examiner issued an amended decision to reflect granting of Snohomish County Planning and Development Services' petition for reconsideration regarding school impact mitigation fees.

Appeal of the Hearing Examiner Decision

On August 22, 2022, the County Council received an appeal of the Hearing Examiner's July 7, 2022, Decision, the August 8, 2022, amended decision, the August 8, 2022, Order Granting and Denying Petitions for Reconsideration, and an August 17, 2022, Order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition (Council Exhibit AA.1).

Requirements for filing a Type 2 appeal

Requirements for filing a Type 2 appeal are presented in SCC 30.72.080:

An appeal must be in writing and contain:

- A detailed statement of the grounds for appeal and the facts upon which the appeal is based, including references to specific hearing examiner findings or conclusions, and to exhibits or oral testimony in the record
- Argument in support of the appeal
- Contact information for the appellants

The grounds for an appeal are limited to the following:

- The decision exceeded the hearing examiner's jurisdiction;
- The hearing examiner failed to follow the applicable procedure in reaching the decision;
- The hearing examiner committed an error of law; or
- The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record.

Summary of grounds for this appeal

The appeal letter requests that the County Council vacate the Hearing Examiner's decision and provide instructions for new proceedings. This request is partly on the alleged grounds that the Hearing Examiner failed to ensure procedural due process and the appearance of fairness. The appeal letter also cites alleged errors of law in the Hearing Examiner's findings and conclusions as reason to vacate the decision and order new proceedings.

Appeal, Responses, Rebuttals, and Motions

The County Council has received the following written arguments from the Appellant, Applicant and Parties of Record.

- Appellants' Appeal of Land Use Decision by Katrina Stewart and Deborah Wetzel (Council Exhibit AA.1)
- Written arguments from Parties of Record in support of the appeal (Council Exhibits AA.4 to AA.9)

- Applicant Pacific Ridge-DRH, LLC's Response to Katrina Stewart's and Deborah Wetzel's Appeal (Council Exhibit AA.10) (Note: Applicant requests summary dismissal of issues 5.1 and 5.4 in its response.)
- Appellants' Stewart/Wetzel Reply to Horton Response to Appeal (Council Exhibits AA.11)

Extra-Record Evidence

SCC 30.72.110 states the closed record hearing "shall be limited to the record from the hearing examiner" and that new evidence "shall not be allowed unless specifically requested by the council." The decision at issue in this appeal stated the Hearing Examiner considered exhibits A.1 through L.2 and the testimony of the witnesses at the open record hearing. The following documents were not included in the Hearing Examiner record:

- The Appeal and the Stewart/Wetzel Reply cite to documents not included in the record before the Hearing Examiner. Those documents include exhibits attached to Deborah Wetzel's petition for reconsideration, which was denied. Applicant Pacific Ridge requested in its Response that Hearing Examiner Exhibits M.3, Ex. 1-8 be excluded from the record.
- The Appeal cites to documents that were exhibits attached to Katrina Stewart's late-filed motion for reconsideration (Hearing Examiner Exhibit M.12), which was not accepted for consideration by the Hearing Examiner.
- Written argument submitted by Party of Record Linda Gray includes attachments 1-8 and 10 that were not ever before the Hearing Examiner.
- Written argument submitted by Parties of Record Carter and Marylou Burns refers to an extra-record document included in Ms. Gray's written argument and a Critical Area Site Plan recorded on August 23, 2022.

Council Jurisdiction for this Appeal

Appeal to Council is authorized under [SCC 30.72.070](#) and Council has jurisdiction over this closed record appeal, except for the two issues that were summarily dismissed pursuant to Council Motion 22-365 on August 31, 2022 (Council Exhibit AA. 3a). Those two issues, 5.5 and 5.6, were dismissed not at the request of any party or any department or officer of the County, but on the Council's own initiative as authorized by SCC 30.72.075. Applicant Pacific Ridge-DRH, LLC requested summary dismissal of two additional issues in its September 12, 2022, written argument. On September 28, 2022, Council passed an oral motion reserving its decision on those two issues until it hears argument from the parties.

Decision Options

At the conclusion of the closed record public hearing, the Council must issue a decision in writing. The decision shall set forth findings and conclusions, which may include those of the Hearing Examiner, that support the Council's decision.

The Council's options, pursuant [to SCC 30.72.120\(2\)](#):

- Affirm the Hearing Examiner's decision;
- Reverse the Hearing Examiner's decision either in whole or in part; or
- Remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

The Council must issue a written decision within 60 days of the last day of the appeal period unless the applicant agrees to an extension. In this case the Council's written decision must be issued no later than October 21, 2022.

Copy: Laura C. Kisielius, Deputy Prosecuting Attorney