

January 9, 2007

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L05P0003**
Proposed Ordinance No. **2006-0463**

HIGHLANDS at WOODBROOK II (fka WOODBROOK 5)
Preliminary Plat Application

Location: 28507 & 28515 – 53rd Avenue South

Applicant: Schneider Homes, Inc.
represented by **George A. Kresovich**, attorney
Hillis Clarke Martin & Peterson
1221 2nd Ave., # 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

King County: Department of Development and Environmental Services (DDES),
represented by **Trisha Bull**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6758
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, with conditions
Department's Final Recommendation:	Approve, with revised conditions
Examiner's Decision:	Approve, with further revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	October 24, 2006
Hearing Closed:	October 24, 2006
Hearing reopened:	December 11, 2006
Hearing closed:	December 11, 2006

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. General Information:

Owner/Developer: Ken Peckham
Schneider Homes, Inc.
6510 Southcenter Boulevard
Tukwila, WA 98188
206-248-2471

Engineer: DMP, Inc.
726 Auburn Way North
Auburn, WA 98002
253-333-2200

STR: SW 35-22-04

Location: The site is located at 28507 & 28515 53rd Avenue South, approximately 780 feet north of the 53rd Avenue South and South 288th Street intersection.

Zoning: R-4
Acreage: 3 acres
Number of Lots: 18
Density: 6 units per acre
Lot Size: Ranges from approximately 5,000 to 6,000 square feet
Proposed Use: Single-family detached dwellings
Sewage Disposal: Lakehaven Utility District
Water Supply: Lakehaven Utility District
Fire District: King County District No. 39
School District: Federal Way School District No. 210

Application completeness date: March 3, 2005

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.

3. The subject property is a three-acre, relatively narrow rectangular parcel (with the long axis running east-west) on the west side of 53rd Avenue South south of South 284th Way, north of South 288th Street and east of 51st Avenue South, in the unincorporated area between Federal Way and Auburn. Its terrain consists generally of a moderate slope to the east, with two gently sloping benches connected by a steeper descent to the east. The site is vegetated in pasture grasses with scattered mixed-species trees and brush. No defined critical areas such as streams and wetlands are located onsite or within close proximity. A single-family residence, a mobile home and two outbuildings lie within the east-central portions of the site (the single-family residence is proposed to be retained within one of the development lots). The surroundings consist of an urbanizing area of the unincorporated county, where fairly standard-density new suburban residential developments are being infilled in a area of generally lower density residential areas. The surrounding parcels to the north, east and south consist of other divisions of the *Woodbrook* subdivision development complex.
4. Applicant Schneider Homes, Inc., proposes subdivision of the property into 18 lots for detached single-family dwellings. The overall residential density would be approximately six dwelling units per acre, with the density achieved at a higher density than would normally be permitted under the applied R-4 zoning through the use of six dwelling unit density credits pursuant to the Transfer of Development Rights (TDR) provisions of Chapter 21A. 37 KCC. Lot sizes would range from 5-6,000 square feet. Road access to the lots would be provided via the installation of a cul-de-sac road running westerly from the property's frontage on 53rd Avenue South in a meandering fashion, terminating in an offset cul-de-sac bulb in the west-central portion of the property. Traffic impacts of the proposed development will be adequately mitigated under applicable code requirements as proposed, by compliance with Chapter 14.70 KCC (Certificate of Concurrency); Chapter 14.75 KCC (MPS mitigation fee payments for each dwelling unit); and Chapter 14.80 KCC (intersection standards; no mitigation required).
5. The property is located within the Bingaman Pond/Mill Creek sub-basin of the lower Green River watershed. The development is subject to the Conservation flow control and Basic water quality requirements of the 2005 King County Stormwater Water Design Manual (KCSWDM). The development stormwater proposal for the development is to route surface drainage flows to an existing stormwater facility in Tract A of the adjacent *Woodbrook IV Division I*. A drainage adjustment and shared facility plan have been approved for the proposal under file L06V0031, in which DDES has concluded that the existing stormwater facility possesses sufficient additional capacity to handle the detention of the proposed development.
6. Resident public schoolchildren at the elementary and middle school levels will walk to nearby bus stops, and high school students will walk to their high school, Thomas Jefferson Senior High School. All of the pedestrian routes to the pertinent bus stops and the high school provide safe walking conditions for school pedestrians.
7. The location of the required recreation facilities for the proposed development (KCC 21A.14.180) was an issue of detailed discussion and presentation in this case. As has been permitted in a very few instances in the past in other subdivisions, the Examiner shall allow the provision of recreation facilities for the residents of the proposed subdivision to be located

offsite, a few hundred feet down 53rd Avenue South, within a relatively large recreation tract (Tract B as depicted on Exhibit 7) to be developed with amenities within the *Woodbrook IV Division II* subdivision directly to the south.

- A. Although such allowance does not meet the letter of the code with respect to the location of recreation facilities onsite in a central location, the Examiner concurs with the Applicant's and DDES's contentions that in this case, the result will be a better provision of recreation facilities for the specific subdivision's residents, because it will allow them to gain access to a larger and presumably more enhanced recreation site in a sufficiently nearby location.
- B. The Examiner makes such allowance only because special circumstances apply in this case, first consisting of the unified development control that is provided by the Applicant's ownership of the subject development and the surrounding subdivisions abutting on three sides. That circumstance lends the Examiner a sufficient degree of comfort that the subject parcel is only a small piece of a larger coordinated development, which if it had been platted differently under conceivable different circumstances would have allowed the arrangement proposed.¹
- C. Of equal importance is the fact that the development residents will not have to cross a collector or arterial road to gain access to the proposed off site recreation tract, since it seems highly likely based on KCDOT testimony that the development area bounded by 55th Avenue South and South 288th Street to the east and south respectively, which includes one remaining larger parcel not yet proposed for subdivision (the immediate corner piece), will not be permitted to have any direct access connection to either of such roads, which will preclude a high level of traffic passing by the subject recreation tract.
- D. In the final analysis, the proposed offsite usage meets the basic intent of the recreation facility requirement, which is to provide for recreation facilities within private residential development which is convenient and accessible to the development residents. The proposal submitted meets that central intent in a manner which will be sufficiently safe.

(The issue seems to beg legislative attention, since the code as written does not seem to provide the reasonable flexibility desired by subdivision developers and supported by DDES review staff.)

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4 zone and the TDR allowances permitted under Chapter 21A.37 KCC.

¹ The subject parcel was obtained by the Applicant somewhat "out of sequence" because of acquisition delay, but nevertheless is part of the relatively unified overall development plan of the Applicant's holdings in the greater area, which are contiguous and encompass a great percentage of the surrounding properties.

2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on January 6, 2006, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Highlands at Woodbrook Division II* (fka *Woodbrook 5*) subdivision, as revised and received January 6, 2006, is approved subject to the following conditions of 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 minimum density requirements of the R-4 zone classification and the maximum density permitted under the proposed use of Transfer of Development Rights (TDR) density credits. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, 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 Environment Services. The applicant shall provide verification of the TDR density credits with the submittal of the engineering plans and final plat, in conformity with Chapter 21A.37 KCC. If a conforming TDR certificate is not submitted, the applicant shall redesign the plat to reflect the number of lots permitted based upon the allowable density without TDR credit. This will result in the reconfiguration and loss of lots.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. 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).

5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the 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 approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 2005 KCSWDM 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 of 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."
 - d. The stormwater detention and water quality facilities are to be combined in a shared facility in Tract A of Woodbrook 4 Div 1. The flow control shall be designed to meet at a minimum the Level 3 Flow Control and Basic Water Quality requirements in the KCSWDM.
 - e. A drainage adjustment(L06V0031) and shared facility plan are approved for this site .
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. Road A shall be improved at a minimum to the urban subaccess road standard.
 - b. FRONTAGE: The frontage of this subdivision is being improved by a separate R/W Use Permit (L06RW004) in conjunction with Woodbrook IV. No other frontage improvements are required.
 - c. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.

- d. Dedicated public road access to the boundary of the site shall be established prior to final plat approval.
8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
9. 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 recording, 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 that reads, "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.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
11. The planter islands (if any) within the cul-de-sac shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
12. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e. area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan. This plan must not conflict with the Significant Tree Inventory & Mitigation Plan.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
 - c. With regard to the square footage, location and centrality, etc., requirements of KCC 21A.14.180, a credit may be taken for recreation space provided in Woodbrook 4 Division 2 AKA The Highlands at Woodbrook Division 1 for up to 18 lots in the subject plat, provided the applicant demonstrates that the future owners of the lots in the subject plat can be merged into the membership of the homeowners association for Woodbrook 4 Division 2 AKA The Highlands at Woodbrook Division 1. Further, this merger shall occur upon the recording of the subject plat. In the event that for some unseen reason the intended offsite recreation tract (Tract B as depicted on Exhibit 7) within Woodbrook 4 Division 2 AKA

The Highlands at Woodbrook Division 1 is not created and/or the lots in the subject development are not merged into the membership of the homeowners association prior to or at the time of final plat approval, the subject subdivision shall provide onsite recreation facilities in full conformity with KCC 21A.14.180.

13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
14. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 53rd Avenue South is on a bus route. If 53rd Avenue South is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

- i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
15. In the event that any archaeological objects are uncovered on the site, the applicant shall comply with RCW Chapter 27.53, Archaeological Sites and Resources. Immediate notification and consultation with the State Office of Archaeology and Historical Preservation, King County Office of Cultural Resources and relevant tribes (including the Suquamish, Puyallup and Muckleshoot tribes) is required if discovered materials are prehistoric and a site is present.

ORDERED January 9, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED January 9, 2007 to the following parties and interested persons of record:

DMP Engineering
Attn: Paul Morrow
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Kelly Whiting
KC DOT, Rd. Srvcs. Div.
MS KSC-TR-0231

Bruce Whittaker
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before January 23, 2007*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before January 30, 2007*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE OCTOBER 24 AND DECEMBER 11, 2006, PUBLIC HEARINGS ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05P0003.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull and Bruce Whittaker, representing the Department; George Kresovich and Hans A. Korve representing the Applicant, and Ken Peckham.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services file no. L05P0003
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report, dated October 24, 2006
- Exhibit No. 3 Application for Land Use Permits received March 3, 2005
- Exhibit No. 4 SEPA Environmental checklist received March 3, 2005
- Exhibit No. 5 SEPA Determination of Non-significance issued October 6, 2006
- Exhibit No. 6 Affidavit of Posting indicating a posting date of August 12, 2005; received by DDES on August 15, 2005
- Exhibit No. 7 Preliminary plat map for L05P0003, received January 6, 2006 (Revised)
- Exhibit No. 8 Level 1 Off-Site Analysis by Daley-Morrow-Poblete, Inc., received January 6, 2006 (Revised)
- Exhibit No. 9 Conceptual Drainage Plan for L05P0003, received January 6, 2006 (Revised)
- Exhibit No. 10 Conceptual Recreation Plan received January 6, 2006 (Revised)

- Exhibit No. 11 Conceptual Roadway Widening Plan received January 6, 2006 (Revised)
- Exhibit No. 12 Limited Scope Traffic Analysis by Christopher Brown & Associates, received February 9, 2006
- Exhibit No. 13 Approved KCSWDM adjustment L06V0031, dated June 29, 2006
- Exhibit No. 14 Corrections to DDES staff report

The following exhibits were entered at the December 11, 2006, reopened hearing:

- Exhibit No. 15 Aerial photo (color) of plats of Jessica Meadows and Woodside Place
- Exhibit No. 16 Diagram of Woodbrook developments with annotations and highlighting
- Exhibit No. 17 Plat maps for the following:
 - Northlake Estates Division 2 – L02P0013 (3 maps – preliminary, revised preliminary and final)
 - Woodbrook 4 – L00P0007 (2 maps – revised preliminary and final)
 - The Highlands at Woodbrook – L00P0007 (final)
 - Woodside Place – L98P0032 (final)
 - Jessica Meadows – L98P0020 (revised preliminary and final)
- Exhibit No. 18 Memo from Trishah Bull to Peter Donahue dated 10/27/2006 re: L05P0003
- Exhibit No. 19 Letter from George Kresovich to Peter T. Donahue dated November 1, 2006, re: L05P0003
- Exhibit No. 20 Letter from C.V. Brown to Hans. A. Korve dated December 6, 2006, re: Woodbrook 5
- Exhibit No. 21 Letter from C.V. Brown to Hans. A. Korve dated December 7, 2006, re: Woodbrook 5

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