June 17, 2011

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email: hearex@metrokc.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L05P0021**
Proposed Ordinance No. **2010-0457**

PAULA'S PLACE
Preliminary Plat Application

Location: 17835 SE 192nd Drive, in the Shady Lake area east of Renton and Kent

Applicant: Burnstead Construction
represented by **David B. Johnston**, Attorney at Law
Livengood Fitzgerald & Alskog, PLLC
121 Third Avenue
P.O. Box 908
Kirkland, Washington 98083-0908
Telephone: (425) 822-9281, Ext. 309
Facsimile: (425) 828-0908
Email: johnston@lfa-law.com

King County: Department of Development and Environmental Services (DDES)
represented by **Kim Claussen**
900 Oakesdale Avenue SW
Renton, Washington 98055
Telephone: (206) 296-7167
Facsimile: (206) 296-7051
Email: kim.claussen@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to revised conditions
Examiner's Decision:	Approve subject to further revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	September 30, 2010
Hearing Continued:	September 30, 2010
Hearing Closed:	November 9, 2010

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:	Burnstead Construction 14980 NE 24th Street, Suite 200 Bellevue WA 98005
Engineer:	Baima & Holmberg 165 NE Juniper Street Issaquah WA 98027 425-392-0250
STR:	36-23-05
Location:	The site is located north of Shady Lake at 17648 SE 192nd Drive, approximately ½ mile east of the intersection of SE 192nd Drive and Petrovitsky Road
Zoning:	R-4 and R-4 Special Overlay (R-4 SO)
Acreage:	5.31 acres
Number of Lots:	23 lots
Density:	Approximately 4.33 units per acre
Lot Size:	Approximately 5,500-6,000 square feet in area
Proposed Use:	Single family detached dwellings
Sewage Disposal:	Cedar River Water & Sewer District
Water Supply:	Cedar River Water & Sewer District
Fire District:	King County Fire District No. 40
School District:	Kent School District No. 415

Application Completeness Date: November 23, 2005

2. Except as modified herein, the facts set forth in the DDES reports[1] 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.

[1] Including the DDES revisions and supplementary reports received September 28 and November 9, 2010 as exhs. 2 b and 25, respectively.

3. The subject property lies in the Shady Lake area east of Southeast Petrovitsky Road, north of the eastern part of the lake on the north side of Southeast 192nd Drive where such road begins to curve southerly around the east side of the lake. The property gains access from Southeast 192 Drive by a relatively narrow panhandle extending due north to the rectangular interior "flag" or "pan" of the panhandle shape. The total acreage is 5.31 acres. The site lies in the unincorporated area east of Renton and Kent in the general Lake Youngs area. The Shady Lake area is undergoing a transition from relatively suburban density lakefront residences surrounded by semi-rural residential parcels to urbanization such that the non-lakefront parcels in the area are being converted to fairly standard dense suburban single-family residential developments. Several other such subdivisions have been approved and/or are proposed in the area, particularly to the west and north. The property abutting to the east is owned by the County, the Spring Lake Open Space tract. The site topography descends gradually in a general southerly direction toward the lake depression, except for the northeasterly 7.49 acres, which descend to the northeast (see next finding). The property is primarily wooded except for cultivated landscaping surrounding an existing residence and outbuildings in the west central portion of the site (these structures are intended to be removed upon subdivision development). No critical areas are evident on the property or in direct proximity, and no threatened or endangered species are known to utilize habitat on or near the property.

4. The property is located within the Peterson Creek sub-basin of the Lower Cedar River Basin. As noted above, the bulk of the property naturally drains to Shady Lake to the southwest, but the northeasterly .749 acres lies northeasterly of a drainage divide between the Shady Lake drainage and the drainage outfall basin of the nearby Lake Desire to the north.

5. Applicant Burnstead Construction proposes subdivision of the property into 23 lots for detached single-family residential development and separate tracts for drainage detention/water quality facilities (Tract B), open space/recreation (Tract C) and a short private access tract (Tract D) serving proposed lots 10-14 in the northerly portion of the site. Vehicular road access would be provided by the extension of a public road (Road A) generally northerly through the site and then curving westerly in a 90 degree turn in the far northern portion (at the location of the aforementioned Tract D serving lots 10-14) to terminate on the westerly boundary. The westerly terminus is intended to connect through to an east-west roadway in the adjacent proposed *Parks III* subdivision which is under relatively concurrent subdivision consideration under file L06P0002. The proposed density is approximately 4.33 dwelling units per acre, with lot sizes ranging from approximately 5,500 to 6,000 square feet in area. Some of the density is achieved by utilization of the county's Transfer of Development Rights (TDR) program established in the zoning code. No special design or other amenities are required under the TDR program.

6. Public water service and sanitary sewer service are available to the development by the Cedar River Water and Sewer District.

7. The proposed surface water drainage system for the development will utilize road catch basins and piped conveyance to the aforementioned Tract B detention/water quality facility in the east central portion of the site (the southeast corner of the larger rectangle "pan" of the panhandle shape). DDES has granted a drainage adjustment (L06V0112) under Title 9 and the Surface Water Design Manual (SWDM) allowing the drainage normally releasing downstream in the northeasterly basin to be rerouted to flow into the Shady Lake drainage sub-basin, essentially allowing the combining of the onsite subbasins into one post-developed detention facility. Release would then be directed down the panhandle to Southeast 192nd Drive from which the

release flows would continue west in the natural downstream direction in the Shady Lake basin. The drainage analysis for the development has identified conveyance restrictions associated with the proposed discharge into Shady Lake, where there are restrictions from the Southeast 192nd Street roadway in an existing channel to the lake. Under mitigation measures imposed by the Mitigated Determination of Non-Significance (MDNS) issued under SEPA for the proposed development action (with the mitigation measure to be imposed as a condition of preliminary plat approval), drainage facility improvements, including an increased-capacity outfall pipe to Shady Lake, are required. The drainage improvements are being made in concert with other nearby developments, including the aforementioned *Parks III development*, the *Shady Lake* plat (L05P0002) and the *Village at Shady Lake* plat (files L04P0017, L06SH012 and L07AE003). A permanent drainage easement has been obtained for such improvements, and the required shoreline management substantial development permit and drainage alternation exception (pursuant to Title 9 KCC and the 2005 SWDM[2]) were approved in concert with the *Village at Shady Lake* preliminary plat proposal.

8. Additionally, the drainage for the development has identified various historical drainage complaints associated with Shady Lake water levels. Conveyance related complaints have focused on abnormally high lake levels occurring in the lake level fluctuation in the recent past. The Shady Lake outlet structure and a downstream culvert crossing under Southeast 196th Drive, both on the south side of the lake, have been upgraded by the King County Department of Transportation (KCDOT) Roads Services Division to help alleviate such concerns. Drainage analysis approved by DDES has concluded that the downstream Shady Lake outlet channel does not overtop in the 100-year-storm event (the regulatory design standard).

9. Given the required conformity of the development with the standards of the KCSWDM (one aspect of which imposes drainage release flow limits based on an assumed fully-forested condition) and the requirements of the drainage adjustment, the subdivision will make appropriate provisions for drainage.

10. The drainage divide on the property forms the boundary of a Special Overlay (SO) zone overlying the base R-4 zoning of the northeasterly 7.49 acres of the property. The SO overlay in this instance is SO-180, a special wetland management area (WMA) overlay which renders the SO overlay portion of the property subject to zoning code regulations governing such special WMA. [KCC 21A.38.120]

11. The zoning code mapping of the SO-180 overlay area is generalized, only roughly following the apparent drainage basin boundaries. At hearing, the Examiner accepted the principle that the evidence-supported actual topographical basin divide would be ruled to properly form the overlay boundary for regulatory imposition. Hence, the relevant actual SO boundary is somewhat northeasterly of the generalized boundary depiction in the zoning code's SO-180 mapping documentation. In this case, the SO-180 regulatory boundary is therefore that depicted as the basin break on ex. 22, and the portion of the property subjected to the SO-180 zoning regulations codified in KCC 21A.38.120 is the .749 acre area lying northeasterly of the basin break as depicted on such exhibit (it is cross-hatched on the exhibit). The remainder of the property is not subject to the SO-180 zoning regulations.

12. Under the SO-180 overlay zoning designation, KCC 21A.38.120.B.1 restricts the subject development in its establishment of impervious surface area because the property is identified in an adopted basin plan (the Cedar River Basin Plan) as subject to impervious surface limitations.

---

[2] The version of the manual which applies to the subject development based on its vesting.

(It is not subject to the clustering requirement of KCC 21A.38.120.B.2.) KCC 21A.38.120.B.1 states that "all subdivisions and short subdivisions on residentially-zoned properties that are identified in an adopted basin plan for impervious surface limitations, shall have a maximum impervious surface area of 8% of the gross acreage of the plat."

13. It appears that the legislation enacting KCC 21A.38.120 did not contemplate the phenomenon as presented in the instant case of a property straddling the SO-180 overlay area; as noted, the bulk of the property is not subject to the SO-180 overlay. Accordingly, the phraseology "all subdivisions and short subdivisions on residentially zoned properties that are identified in an adopted basin plan for impervious surface limitations" must be given an interpretation to determine the applicability of the SO-180 restrictions.

14. From a first-glance reading of the code section, particularly subsection B.1, it would appear that subdivisions and short subdivisions on property which is even only in part identified in the basin plan for impervious surface limitations would be subject to the limitation for the entirety of their land area. However, a more in-depth review of the context of the regulation leads the Examiner to conclude that the limitation only applies to the discrete portion of the property which is actually subject to the SO-180 overlay, as determined above. The reasoning is as follows: Subsection B of the code section at issue, KCC 21A.38.120, reads "the following development standards shall be applied in addition to all applicable requirements of KCC Chapter 21A.24 (the critical areas chapter) to *development proposals located within a wetland management area district overlay (such as the subject SO-180 area)." (emphases added)* Given the mandate of Washington case law that zoning regulations are to be strictly construed and in cases of ambiguity interpreted in favor of the property interest, the Examiner concludes that in this context of essentially split overlay zoning, the term "development proposals located within" is to be interpreted as meaning the *discrete portion* of the development proposal "located within" the WMA overlay.[3] [*Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007), citing *Mall, Inc. v. City of Seattle,* 108 Wash.2d 369, 385, 739 P.2d 668 (1987) and *Morin v. Johnson*, 49 Wn.2d 275, 300 P.2d 569 (1956)]

15. Initially, DDES took the position that the drainage adjustment granted to allow drainage diversion away from the northeast basin overlain with the SO-180 overlay rendered the SO-180 overlay's WMA development restrictions inapplicable to the proposed subdivision. In the face of the Examiner's expressed skepticism that since the KCC 21A.38.120 WMA regulations triggered by the overlay zone are zoning regulations, and a Title 9 KCC drainage adjustment does not have the legal effect of a zoning variance, DDES revised its interpretive position and concluded that the northeasterly .749-acre area under the overlay is subject to the WMA regulations of KCC 21A.38.120 and their 8% impervious surface limitation.

---

[3] With the regulatory implementation of the overlay based on actual topography rather than the generalized mapping of the overlay, as noted previously. In the final analysis, therefore, the portion of the site which is subject to the SO-180 wetland management area requirement under KCC 21A.38.120.B.1 is the area within the drainage outfall basin of the nearby Lake Desire to the north, the .749 acre portion northeast of the drainage divide in the northeasterly part of the site. That area is therefore subject to the 8% maximum impervious surface area limitation and the limitation is calculated as 8% of that gross acreage of .749 acres (proportional in other words, the limitation is proportional to the area subject to the overlay regulation; see later findings and conclusions 1-5).

16. The Applicant testified that it is not feasible to develop the subdivision as proposed in the overlay area under the 8% maximum impervious surface limitation, and that adjusting the plat design by reducing lot sizes to achieve the desired lot yield is not practicable from a marketing standpoint. The Applicant further offers the following relevant arguments:[4]

    A. The limitation was intended to apply to rural areas where the 8% limit could reasonably be observed rather than to urban areas of greater density which make the limitation very problematic to achieving urban lot yields.

    B. DDES's original position regarding the issue should be accorded legal deference. DDES's drainage adjustment acts to eliminate any real impact of the development on wetlands. As the subject overlay area onsite constitutes an infinitesimally small portion of the SO-180-overlain drainage basin, and the impact of the development's drainage on wetlands is negligible, the 8% impervious surface restriction is nonsensical and should not apply.

    C. If the Examiner does not concur with the Applicant's position on the applicability of the SO-180 overlay restrictions, the Applicant agrees to a condition that would permit the impervious surface allowance on the SO-affected portion of the property to be calculated from a basis of 8% of the *entire* 5.31-acre (231,223 square feet) gross plat area (18,498 square feet) rather than 8% of the .749-acre affected area (2,610 square feet).

17. Hearing participants expressed concern about drainage impacts in the subject area, with development effects on Shady Lake water levels a particular concern, as well as school pedestrian safety along Petrovitsky Road and on an off-road pedestrian path, with the pedestrian path questioned as being insufficiently improved to provide for year-round pedestrian convenience and of uncertain legal rights. An abutting property owner to the northeast (Dobrowolski) requests extension of the subdivision road system to her property for development access, and also expresses concern that the development not cause any drainage backup into or cause overflooding of her ornamental pond. Lastly, a DDES-recommended condition of approval encourages (rather than requires) that development construction not occur during the wet season (the normal limitation period being October 1-April 30), and imposes special erosion prevention conditions should it occur during the wet season; a neighbor requests that such seasonal limitation be made a mandatory prohibition.

18. The property's east boundary forms the Urban Growth Boundary (UGB) established in the county's comprehensive plan adopted under the Growth Management Act (GMA). Abutting to the east is county-owned open space. Interested neighboring residents have expressed a desire for a trail connection from the internal roadway of the subject development to such open space area. The Applicant has stated a lack of objection to allowing for such a trail connection in the Tract B drainage detention area. The county Department of Natural Resources and Parks (DNRP) Parks Division has indicated that it does not intend to develop any connecting trail at the present time. There has also been an indication that the county tends to discourage access into rural area parks and open space facilities directly from urban development, but that has not been reiterated by Parks.

---

[4] The Applicant apparently misapprehended the Examiner's related and concurrent enquiries regarding the possibility of dewatering downstream wetlands in the Lake Desire outfall basin by the effect of the drainage adjustment. Those enquiries were in the context of assessing whether the subdivision made appropriate provisions for drainage under RCW 58.17.110, not in addressing conformity with KCC 21A.38.120 and the SO-180 WMA impervious surface limitations.

19. As noted above, a discrete recreation tract (Tract C) is proposed for the southwestern portion of the site adjacent to the internal roadway; active recreation facilities are proposed to be developed in such area. The proposed recreation site and facilities would be sufficiently central and accessible and convenient to development residents.

20. School pedestrian walkway safety will be adequately provided. The resident school pedestrian safety issues are as follows:

    A. Resident public elementary and high school students will be bused to school from bus stops along Southeast 192nd Drive and at the Southeast 192nd Drive /Petrovitsky Road intersection, respectively. Safe walking conditions to the bus stops will be provided by the development's internal, frontage and offsite road improvements extending westerly to Petrovitsky Road.

    B. Resident public middle school students will be required to walk to Northwood Middle School, which is northwest of the site on the east side of Petrovitsky Road. Two route alternatives exist for pedestrian access to the school: a) a route exclusively alongside public roads, west along Southeast 192nd Drive to and then north along the east side of Petrovitsky Road, and b) an alternative route which runs partway along Southeast 192nd Drive and then utilizes an existing public pedestrian path/trail that runs north from Southeast 192nd Drive within a county regional drainage facility parcel and an undeveloped Kent School District parcel to Southeast 188th Street within the nearby *Cambridge at the Parks* residential subdivision, and then along public road sidewalks to the school. (In the longer term future, a third alternative pedestrian route to the school may be available: northwestward from the property via the aforementioned proposed *Parks III* subdivision and then a proposed subdivision to the north (*Waterstone at Lake Desire*; L06P0018), within and from which the route would follow existing public road sidewalk improvements.)

    C. In alternative a, safe walking conditions exist along Petrovitsky Road, which provides a combination of directly abutting and separated 6-8 foot wide asphalt walkways (though in places weed maintenance is in order), by the development's internal and frontage road improvements and by required offsite road improvements along Southeast 192nd Drive westerly to Petrovitsky Road. The safety of using Petrovitsky Road walkways is disputed by neighbors, however, due to 50 mph vehicle traffic alongside. Though the speed of vehicle traffic alongside the pedestrian walkways on Petrovitsky Road may raise a perceptual concern about pedestrian safety, actual physical safety is the standard against which sufficient safety must be judged. It is common in suburban and rural areas to have pedestrian walkways along relatively high-speed roadways; such adjacency in and of itself is not shown by any evidence to be inherently unsafe for school pedestrians, particularly as in this case the pedestrians at issue are relatively older middle school students. The existing walkways along Petrovitsky Road are found to provide sufficient safety for the planned middle school student usage.

    D. The use of alternative b is less attractive in terms of pedestrian comfort due to muddy and at times dark wintertime conditions. The trail route thus presents some pedestrian disincentives during the winter season. The alternative Petrovitsky Road route, found sufficiently safe above, presents a reasonable alternative that meets the legal requirement of safe conditions. Given the age of the users at issue in this consideration, middle-schoolers rather than elementary schoolers, and reasonable reliance on parental direction

and the availability of an alternative public road route via Petrovitsky Road, the Examiner is not persuaded that there are not safe walking conditions available merely because of the trail's condition, and there is therefore no justification to require the trail's improvement. From another standpoint, the Examiner is powerless to ban the trail's use.

E. In summary, the pedestrian facilities in place and to be provided along with other improvements required by conditions herein will provide sufficiently safe walking conditions for resident schoolchildren.

21. The City of Renton requests that the development's road improvements be required to be constructed to City standards. No evidence is presented into the record demonstrating the existence of a pertinent interlocal agreement between the City and the County authorizing such a requirement.

CONCLUSIONS:

1. The Applicant's proposed condition regarding implementation of the SO-180 overlay in a sense mixes apples and oranges and is unpersuasive as meeting the regulatory requirement. Although the pertinent regulation provision does indeed state on its face that the 8% impervious surface limitation is to be based on the gross area of the plat, as discussed above the situation at hand is unusual in that it involves a subdivision that is not entirely within the overlay area, and thus the overlay impervious surface limitation is not imposed on the entire area of the plat. The Examiner has ruled that a reasoned interpretation of the code is that only the discrete area actually within the overlay is subject to the limitation (as well as the overlay being determined by actual site conditions rather than the generalized mapping in the zoning code), rather than the entirety of the subdivision as the provision appears to require at first glance. But to hold as a reasoned reading of the code section as a whole, that interpretation requires a counterpart limitation of the basis of calculation of the 8% limitation to the discrete overlay area as well, in other words a parallel, congruent calculation.[5] It is wholly unreasonable, and a strained interpretive approach, to attempt to utilize different bases of calculation in this regard, *i.e.*, "to have one's cake and eat it, too." The result of the Applicant's desired calculation approach would be that rather than an 8% impervious surface limitation being observed within the SO-180 WMA overlay area, as the code clearly requires, an approximately 57% limitation would pertain. That is an absurd result totally contrary to the general thrust of the section that development of SO-180-encumbered lands not exceed 8% impervious surface area. It is a fundamental principle of statutory construction that strained interpretations and absurd results are to be avoided. The mixing of the bases of calculation is not reasonable and is not accepted as a correct reading of the code provision as a whole. The Applicant's argument in this regard is unpersuasive.

2. In order to achieve compliance with the impervious surface limitation imposed on the SO-180 WMA overlay zoned portion of the site, the northeasterly .749 acres, the preliminary plat approval must be conditioned on that portion of the site being subject to an 8% impervious surface limitation based on the land area of the overlay portion. Impervious surface development on that portion must therefore be limited to 2,610 square feet of area.

[5] In other words, either gross property area for both the areal extent of the limitation and its calculated effect, or discrete overlay area for both.

3. According deference to DDES's now-withdrawn code interpretation of the non-applicability of the SO-180 limitation, as the applicant argues, would be a futile exercise, aside from evaluating its merit, since the interpretation to which the Applicant urges deference no longer exists. However, there is a DDES interpretation that the Examiner does accord deference to in this regard, and that is DDES's final code interpretation that the discrete overlay area, the northeasterly .749 acres, "should be limited to a maximum 8% impervious surface." Aside from the fact that DDES's interpretation is correct and supports the Examiner's similar holdings above, as the opinion of the professional administrative staff charged with administering the zoning code, such interpretation, not shown to be clearly in error, is deserving of deference. [*Mall, Inc. v. City of Seattle,* above]

4. The Applicant's argument that the 8% limitation was only intended for rural areas of the county and is unreasonable for urban area development is not reflected in the code. There is no such limiting language; the zoning code provision applies to all areas overlain with the SO-180 WMA overlay (based on on-the-ground analysis as ruled above), whether within the UGA or outside of it.

5. The Examiner has no authority to simply waive the impervious surface limitation, regardless of the actual relative impact of the development on drainage and wetlands and the Wetland Management Area.[6] The limitation as enacted is a fixed zoning code regulation, not a performance standard allowing a flexible and variable regulatory approach depending on actual ground conditions and development design and attributes. In order to gain regulatory relief from what the Applicant considers to be an improper and onerous zoning restriction, a zoning code variance would be required. The Applicant indicated its lack of interest in applying for such a variance, based on DDES's informal indication that one would not be approved.

6. The Examiner concurs in general with county staff's conclusion that there is insufficient regulatory authority to require the development to extend a stub road to the Dobrowolski property adjacent to the north. Such road extension is not necessary for general traffic circulation. It is well-established Washington law that the statutory purposes of the subdivision act, more particularly the requirement of RCW 58.17.110 that a subdivision serve the public health, safety and welfare and the public use and interest, and make "appropriate provisions for...roads...," provide insufficient regulatory authority to require without compensation the extension of subdivision roads to subdivision perimeters in order to serve future development of adjacent parcels. A requirement of extension on such grounds without compensation would constitute an impermissible regulatory taking as there would not be a sufficient *rational nexus* (connection) between the impact of the development and the requirement. [*Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.App. 502, 887 P.2d 446 (1995), review denied, citing *Unlimited v. Kitsap County*, 50 Wn.App. 723, 750 P.2d 651 (1988) and *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987)] There may be other options of gaining development access to the Dobrowolski property, including private negotiation. It cannot be required by King County without compensation to the developer. The County has not proposed such a compensatory arrangement to be incorporated in this proposal. The Examiner therefore declines to impose such a requirement.

---

[6] The legislative wisdom of state and county lawmakers must be respected "as is" in deciding land use applications, since policy decisions are the province of the legislative authority. [*Cazzanigi v. General Electric Credit*. 132 Wn. 2d 433, 449, 938 P.2d 819 (1997)] A quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Rental Owners v. Thurston County*. 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

7. Absent a pertinent interlocal agreement to such effect, there is no legal authority to impose City of Renton road standards on development in the unincorporated area.

8. There is no evidence that the development's drainage would have any effect of backing up onto the Dobrowolski property and flooding the ornamental pond onsite. As found above, the development makes appropriate provisions for drainage.

9. The request that seasonal construction limitations advised by DDES be made mandatory cannot be honored. The issue is largely one under DDES's administrative authority, and in any case, the evidence in the record, particularly given DDES's recommended erosion control provisions for wet-season activity (which shall be imposed), does not demonstrate justification for such a mandatory restriction.

10. 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 program.

11. If approved subject to the conditions below, the proposed subdivision will conform to the zoning code, particularly its SO-180 special Wetland Management Area impervious surface limitations in KCC 21A.38.120.B.1.

12. 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.

13. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.

14. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted as Exhibit 22 on November 9, 2010, 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 *Paula's Place* subdivision, as revised dated October 28, 2010 and received into the record November 9, 2010 (Exhibit 22), is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19A 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 that 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-4 zone classification, and with the impervious surface limitations imposed by KCC 21A.38.120.B on the northeasterly .749 acre (see Condition 24). 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.

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.

The applicant shall provide the pertinent TDR certificate with the submittal of the engineering plans and the final plat. If the TDR certificate cannot be obtained, the applicant shall redesign the number of lots based upon the allowable density. This will result in the reconfiguration and loss of lots.

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 hydrant location, water main and fire flow standards of Chapter 17.08 KCC.

6. (Deleted)

7. (Deleted)

8. The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Basic Water Quality menu in the 2005 King County Surface Water Design Manual (KCSWDM).

9. A new offsite drainage outfall pipe to Shady Lake is required in conjunction with Shoreline Substantial Development Permit L06SH012 and The Village at Shady Lake L04P0017. The improvement shall be constructed with this development individually or jointly with other developments. The new pipe is proposed across the westerly portion of Lot 28, Block 2, of Shady lake Addition. This offsite drainage improvement shall be designed in general conformance with the Conceptual Drainage Plan received March 20, 2008 (Village at Shady Lake); unless otherwise approved by DDES. Plans for the improvement shall be included with the engineering plan submittal. Note that a drainage easement has been acquired for this improvement.

10. This site is subject to the Wet Season Erosion Control Requirements in Appendix D of the 2005 King County Surface Water Design Manual (KCSWDM). If construction is occurring in the wet season, an erosion control supervisor shall be designated per Section D.5.4. Weekly reviews and documentation shall be provided per Section D.5.4 Maintenance Requirements. Notes for these requirements shall be placed on the engineering plans. Because the site is in close proximity to Shady Lake, DDES encourages that no site construction take place during the seasonal limitation period (October1 to April 30).

11. A drainage adjustment(L06V0112) is approved to combine the onsite subbasins into one post-developed detention facility. All conditions of approval for this adjustment shall be incorporated into the engineering plans.

12. The following road improvements are required to be constructed according to the 1993 King County Road Standards (KCRS):

a. Road "A" shall be improved to the urban subaccess street standard, including a temporary turnaround near proposed Lots 15 and 16. A Type III barricade shall be installed at the temporary termini of Road "A" near the west subdivision boundary. Signage shall be manufactured (aluminum sign blank) and installed (using tamper-resistant hardware) on the barricade that identifies that the roadway is temporarily closed and will be extended with future development. The sign shall provide the following message: *This road is temporarily barricaded and is required to be extended upon future development. Please contact King County DOT Traffic Impacts Unit at (206) 296-6596 for information.*

Curb returns shall be constructed that are consistent with the requirements of Section 2.10A of the KCRS.

b. Tract D shall be improved to the Private Access Tract standard, per KCRS Section 2.09 . This tract shall be owned and maintained by the Lot owners served.

Note: Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 1993 King County Road Standards. A 36-foot wide (curb-to-curb) roadway is required to allow for parking without any restrictions.
Permitted alternatives to roadways wider than required under the KCRS would include either:

(i) the conveyance of a minimum 3-foot wide private easement abutting the public right-of-way for the private installation and HOA maintenance and enforcement of "No Parking Fire Lane" signs, and the installation of these signs, or,
(ii) installation of a fire suppression system meeting the requirements of the Fire Marshal in each unit/structure.

A note referencing the selected alternative, as appropriate, shall be placed upon the final plat map – and the easement shown if alternative (i) is selected

c. FRONTAGE: SE 192nd Street shall be improved along the property frontage in accordance with urban neighborhood collector standards, with a minimum of 12 feet of pavement on the south side of the roadway crown, and no less than 16 feet of pavement (meeting the urban neighborhood collector half-street cross-section) on the north side (plat frontage) of the roadway crown. Urban shoulder improvements: concrete curb/gutter and sidewalk, are required along the entire frontage of the subdivision, with appropriate transitions to the off-frontage improvements to the west, and the existing improvements to the east.

The final designs of the SE 192nd Street frontage improvements should be coordinated with the future necessary road improvements for The Village at Shady Lake plat (DDES File #L04P0017) and The Parks, Division III (DDES File #L06P0002) to assure a consistent roadway alignment across all of the subdivisions' frontages. During the engineering review phase, the precise alignment may be adjusted to allow an offset between the right-of-way centerline and the interim construction centerline (16-feet

south of the new curb line) to minimize/eliminate the need for relocation of utilities for these interim improvements. However, a roadway crown shall be set no less than 12 feet from the south edge of pavement.

d. OFFSITE: Offsite road improvements are also required along SE 192nd Street, extending westerly from the subject property to Petrovitsky Road SE. The design requirements for the offsite improvements shall be generally the same as those shown in the conceptual road improvement plans submitted to DDES, with a minimum of 24-feet of pavement (2-12 foot wide travel lanes: one lane on each side of a new roadway crown) and a five-foot wide paved shoulder for pedestrians along the north side of the roadway.

e. (Deleted)

f. (Deleted)

g. Construction impacts on area travel, pedestrian safety and ingress/egress to residences on the Shady Lake loop road (SE 192nd Drive/SE 196th Drive) shall be addressed by a construction traffic and management plan. The plan shall be prepared and submitted with the engineering plans for the plat and shoreline substantial development, for review and approval by DDES prior to the start of construction.

h. Channelization and illumination plans for all off-site roadway improvements shall be submitted for DOT review and approval. Channelization and illumination shall conform at minimum to the requirements of the 1993 KCRS.

i. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.

j. A Road Variance L06V0111 is approved for reduced entering sight distance. All conditions of approval for this variance shall be met prior to engineering plan approval.

k. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.

13. There shall be no direct vehicular access to or from SE 192nd Drive from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.

14. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.

15. 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 the 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.

16. 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 the 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.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 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., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.

    b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.

18. 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 tract.

19. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 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 (206) 684-1622 to determine if Southeast 192nd Drive is on a bus route. If so, 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.

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.

20. 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 final plat.

21. To implement K.C.C. 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of K.C.C. 21A.38.230. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 21A.38.230.B.4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 21A.38.230.B.4.d.(2).

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C. 21A.38.230.B.6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

22. The following have been established by SEPA as necessary requirements to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with these items prior to final approval.

To mitigate the significant adverse impact (KCC 14.80.030.B) the plat of Paula's Place will have on the intersection of Southeast 192nd Street/Petrovitsky Road, the applicant shall install, either individually or in conjunction with other development projects in the area, a southbound left turn lane from Petrovitsky Road onto eastbound Southeast 192nd Street. This turn lane shall comply with requirements in the King County Road Standards, including a 12-foot wide turn lane with no less than 100 feet of storage, one travel lane in each direction on Petrovitsky Road, eight (8) foot wide paved shoulders on each side of Petrovitsky Road and an illumination system meeting applicable County requirements that extends northerly to the existing SE 184th Street/Petrovitsky Road intersection. This may include relocation of any utilities conflicting with these requirements. Minor modifications to this may be proposed through the variance process.

The design for the Southeast 192nd Street/Petrovitsky Road intersection improvements shall be approved by the King County Department of Transportation.

In lieu of the installation of the above-noted improvements prior to final plat approval, the applicant (successors or assigns), either individually or jointly with other developers, may post a financial guarantee with King County which assures the installation of these improvements

within two years of the recording of the plat of Paula's Place. In this event, the intersection improvement design must be approved by KCDOT prior to approval of the engineering plans for Paula's Place.

If the above-noted intersection improvements have already been made by others prior to the recording of Paula's Place, or a financial guarantee has been posted by others which assures the installation of these improvements, then the Applicant (or successors or assigns) for Paula's Place shall pay a pro-rata share dollar amount to the developer who has made the improvements or "bonded" for the improvements, in the amount proportional to the impacts of The Parks III. The pro-rata share dollar amount to be paid should be based on the following:

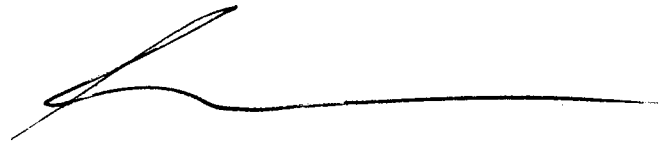
- The final Paula's Place lot count
- The total trips contributed to the intersection of Southeast 192nd Street/Petrovitsky Road intersection by the plats of the Village at Shady Lake (L04P0017), The Parks Division III (L06P0002), Paula's Place (L05P0021), Shady Lake (L05P0002), Mitchell short plat (L04S0016), Shady Lake short plat (L05S0008) and any future land use applications submitted to King County for which compliance with the King County Intersection Standards (KCC 14.80) is required at the Southeast 192nd Street/Petrovitsky Road intersection.
- In the event that either King County adopts a formal "latecomer's" system prior to final plat recording, that system may be followed in lieu of the approach described above, at the discretion of the applicant (or successors or assigns), as long as at a minimum there is a financial guarantee which assures the above-noted intersection improvements will be installed within two years of the date of recording of the plat of Paula's Place. [Comprehensive Plan Policy T-303 and King County Code 21A.28.060A]

23. All future residences within this subdivision are required to be sprinkled NFPA 13D unless the requirement is removed by the King County Fire Marshal or his/her designee. The Fire Code requires all portions of the exterior walls of structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20-foot wide, unobstructed driving surface. To qualify for removal of the sprinkler requirement driving surfaces between curbs must be a minimum of 28 feet in width when parking is allowed on one side of the roadway, and at least 36 feet in width when parking is permitted on both sides.

24. The plat development is subject to the 8% impervious surface limitation imposed by KCC 21A.38.120.B.1 in the northeasterly .749-acre portion (the portion that does not drain directly into the Shady Lake drainage basin and is thus subject to the SO-180 Wetland Management Area overlay zone). The 8% limitation calculation shall be based on the acreage of the overlay portion of the site, .749 acres, rather than the entirety of the plat property. The development impervious surface allowable in the SO-zoned portion of the development property is therefore a maximum of 2,610 square feet. The plat design, including lot and road layout as necessary, shall be revised as necessary to achieve such limitation. If the development's recreation area is relocated to such area to facilitate meeting such limitation, DDES shall certify in writing its conclusion that such location conforms to the recreation area locational standards of the zoning code. DDES shall also certify in writing that the lot layout and resultant reasonably estimated roof, driveway and other impervious surface construction within such area will comply with the 8% impervious surface limitation in its recommendation of final plat approval to the County Council. A legal notation approved as to wording by DDES shall be placed on the face of the final plat reflecting the impervious surface limitation in the SO-zoned portion.

25. A pedestrian trail easement or right-of-way from the interior road to the east boundary of the property abutting County park land, in the area of drainage Tract B, conforming as to width and location to County Department of Natural Resources and Parks (DNRP) specifications, shall be dedicated to the County. Improvement and opening of such trail provision to public usage and park access shall be at the discretion of the County.

ORDERED June 17, 2011.



Peter T. Donahue
King County Hearing Examiner

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 July 1, 2011***. If a notice of appeal is filed, the original and 2 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 July 8, 2011***. 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 1039, King County Courthouse, 516 Third 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 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 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 SEPTEMBER 30 AND NOVEMBER 9, 2010, PUBLIC HEARING ON THE PRELIMINARY PLAT APPLICATION OF PAULA'S PLACE, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05P0021.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen, Bruce Whittaker and Kristen Langley representing the Department; Tiffiny Brown, Shupe Holmberg and David B. Johnston, representing the Applicant, and Debbie Dobrowolski, Mark Reeves, Joe Giberson and Darrell Offe.

The following Exhibits were offered and entered into the record on September 30, 2010:

Exhibit No. 1	Department of Development and Environmental Services (DDES) file no. L05P0021
Exhibit No. 2a	DDES Preliminary Report dated September 30, 2010
Exhibit No. 2b	Corrections to the DDES Preliminary Report dated September 30, 2010

Exhibit No. 3	Application for Land Use Permits received October 27, 2005
Exhibit No. 4	State Environmental Policy Act (SEPA) checklist received October 27, 2005
Exhibit No. 5	SEPA Determination of Non-Significance issued August 10, 2010
Exhibit No. 6	Affidavit of Posting indicating a posting date of December 14, 2005; received by DDES on August 11, 2010
Exhibit No. 7	Revised preliminary plat map received September 12, 2006
Exhibit No. 8a	King County Assessor Map SE 36-23-05
Exhibit No. 8b	King County Assessor Map SE SW 31-23-06
Exhibit No. 9	Revised conceptual drainage plan received January 14, 2008
Exhibit No. 10	Revised Level I Downstream Drainage Report received September 12, 2006
Exhibit No. 11	Wetland study received September 12, 2006
Exhibit No. 12	Shady Lake Downstream Drainage Analysis received June 13, 2010
Exhibit No. 13	Road Variance L06V0111 approval issued May 10, 2007
Exhibit No. 14	King County Surface Water Design Manual Adjustment approval issued June 7, 2007
Exhibit No. 15	Hearing Examiner Report and Decision for Village at Shady Lake, DDES file no. L04P0017, issued August 10, 2009
Exhibit No. 16	Aerial photograph of subject area with overlay of four potential plat developments: Village at Shady Lake L04P0017, Parks Division III L06P0002, Paula's Place L05P0021 and Waterstone at Lake Desire L06P0018
Exhibit No. 17	Map depicting parks in subject area
Exhibit No. 18	Photographs of proposed school walkway taken by Mark Reeves in September 2010
Exhibit No. 19	Letter from DDES to Debbie Dobrowolski summarizing the November 13, 2007 pre-application meeting for Waterstone plat issued December 12, 2007
Exhibit No. 20	Waterstone preliminary plat, L06P0018

The following Exhibits were offered and entered into the record on November 9, 2010:

Exhibit No. 21	Letter from Shupe Holmberg to Kim Claussen dated October 28, 2010
Exhibit No. 22	Revised site topographical map showing drainage basin between Shady Lake and Lake Desire, revised conceptual drainage plan, and revised preliminary plat map dated October 28, 2010
Exhibit No. 23	Addendum to Technical Information Report (Existing Drainage from Site) dated October 21, 2010
Exhibit No. 24	Email from Bonnie Babcock to Kim Claussen dated October 28, 2010
Exhibit No. 25	Memorandum from Kim Claussen to the Hearing Examiner dated November 1, 2010
Exhibit No. 26	Memorandum from Tiffiny Brown to the Hearing Examiner dated November 1, 2010

PTD:gao
L05P0021 RPT