

December 21, 2009

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L09P0002**
Proposed Ordinance No. **2009-0603**

BOULEVARD HEIGHTS
Preliminary Plat Application

Location: In the Boulevard Park area east of Military Road S, east of 26th Avenue S between S 120th Place and S 122nd Street

Applicant: **Callidus Development**
16838 SE 43rd Street
Issaquah, Washington 98027
Telephone: (206) 954-4945

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

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 revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	December 1, 2009
Hearing Continued:	December 1, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

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

FINDINGS:

1. **General Information:**

Owner/Developer: Callidus Development
 Attn: Troy Schmeil
 16838 SE 43rd Street
 Issaquah, Washington 98027
 (206) 945-4549

Engineer: American Engineering Corporation
 4032 148th Avenue NE
 Redmond, Washington 98052
 (425) 881-7430

STR: 09-23-04
 Location: In the Boulevard Park area east of Military Road S, east of 26th Avenue S between S 120th Place and S 122nd Street

Zoning: R-12
 Acreage: 1.98 acres
 Number of Lots: 17
 Density: Approximately 8.6 units per acre
 Lot Size: Approximately 3,100-4,000 square feet in size
 Proposed Use: Single Family Detached Dwellings
 Sewage Disposal: Valley View Sewer District
 Water Supply: King County Water District No. 20
 Fire District: North Highline Fire District No. 11
 School District: Highline School District

Application Completeness Date: April 26, 2009

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 lies east of Military Road S in the unincorporated Boulevard Park area between Seattle/Burien and Tukwila, east of 26th Avenue S between S 120th Place and S 122nd Street. It is a rectangular 1.98-acre parcel currently without public road frontage. (It is proposed to be provided public road access and frontage by the extension of S 120th Place in the preliminarily approved 16-lot *CanhTan Ta* subdivision (DDES file no. L06P0019) of the adjoining property abutting to the north.) The surrounding area is developed generally with single-family detached dwellings on a variety of lot sizes, except for some industrial buildings. The property itself is undeveloped.
4. The site terrain generally slopes to the east with moderate grades, except for an area of steeper slopes along the eastern boundary. The property is vegetated with moderately dense second- and third-growth mixed-species forest and typical Pacific Northwest shrubbery and groundcover. No critical areas such as wetlands, streams, etc. are identified on the site or within close proximity.

5. Applicant Callidus Development proposes subdivision of the property into 17 lots for detached single-family residential development and separate tracts for recreation/open space, storm-drainage detention and private access drives/joint use driveways. The proposed recreation facility location is sufficiently central and meets the locational requirements of county code. Vehicular access to the site would be provided by the aforementioned extension of S 120th Place along the property's north boundary. (The subject development would provide supplemental right-of-way and frontage improvements along the south side of the S 120th Place extension. If the subject plat recording *precedes* that of the *CanhTan Ta* plat, then the subject development shall be responsible for acquiring and dedicating all needed right-of-way and constructing a half-street road improvement offsite (see Conditions 10.b and 14 for greater detail). From S 120th Place, a short offset-bulb cul-de-sac would extend southerly and then southeasterly into the site, from which would extend two private access tracts to the east and west. The proposed development lots would gain access either directly from S 120th Place, the cul-de-sac or the access tracts.
6. The site lies within the Duwamish Waterway/Green River drainage. Surface water runoff generated by the proposed development would be routed via a culvert through the adjacent *CanhTan Ta* subdivision development, with stormwater vaults placed on both development sites to meet detention and water quality requirements. The routing to the north, which is a diversion from the existing easterly sheetflow into a north-running drainage swale and which will result in a post-developed discharge location approximately 118 feet north of the natural discharge location, has been approved via a DDES administrative Drainage Adjustment issued under file no. L09V0034. Downstream, there had been some history of overtopping of a culvert system connecting to the Tukwila International Boulevard drainage system, which has been addressed by the City of Tukwila with new riprapping. Level III Flow Control specifications under the 2009 King County Surface Water Design Manual (KCSWDM) have been proposed by the Applicant and constitute appropriate drainage impact mitigation.
7. Traffic impact mitigation is provided via the standard reviews under Title 14 KCC and imposition of Mitigation Payment System (MPS) fees in the recommended conditions.
8. Existing facilities and those which would occur with the offsite extension of S 120th Place to the site and the internal plat road development will provide safe walking conditions for resident school children to their respective public schools/school bus stops.
9. Urban water supply is certified as available to the development by King County Water District No. 20. The Valley View Sewer District has certified the availability of sanitary sewer service to the development.
10. Neighboring property owners/residents have by letter expressed concerns about loss of the existing wildlife habitat qualities and view/privacy protections presented by the undeveloped nature of the property. Absent the presence of critical areas/onsite buffer requirements under the county's critical areas ordinance (which is inapplicable in this case given the absence of such areas on and within close proximity of the property) and absent identification of an otherwise significant adverse environmental impact on wildlife, there is no regulatory protection of wildlife habitat onsite in this subdivision review. There is also no legal authority for any regulatory protection of views, and none for buffering in the development of what is a generally similar type of development and density interfacing with the existing detached single-family residential neighborhood. (Separately, KCC 16.82.156 or other regulation may require a certain level of retention and/or replacement of significant trees; assessment will occur during construction plan review, which is under the administrative authority of DDES.)

11. The Applicant expressed concern during the hearing about the allowance of zero lot line structural development in the proposed subdivision. Under the provisions of KCC 21A.12.030, standards for minimum lot width, street setbacks, and interior setbacks may be modified under the provisions for zero lot line and townhouse developments in the R-12 zone.

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-12 zone.
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 October 22, 2009 (Exhibit no. 7), 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 *Boulevard Heights* subdivision, as revised and received October 22, 2009 (Exhibit no. 7), 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-12 zone classification. All lots shall meet the minimum dimensional requirements of the R-12 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 DDES.

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 (KCRS) 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 and fire flow standards of Chapter 17.08 KCC.

6. The drainage facilities shall meet the requirements of the 2009 King County Surface Water Design Manual (KCSWDM). The applicant is proposing Level III Flow Control and Enhanced Basic Water Quality requirements of the 2009 KCSWDM.
7. The proposed stormwater detention facility outlet is to be routed north in a new conveyance system through the preliminarily approved subdivision of *CanhTan Ta*. The two outlets are to be combined at the northeast corner, discharging to the east across parcel no.0923049460. An offsite drainage conveyance improvement and drainage easement to King County is required across the adjoining parcel to the east (parcel no. 0923049460). This improvement shall be constructed with *CanhTan Ta* or this subdivision, in general conformance with the Grading and Storm Drainage plan received March 24, 2008 (for *CanhTan Ta*), unless otherwise approved by DDES.

Note that a letter of intent to provide a drainage easement has been obtained from the property owner of parcel no. 0923049460.

Appropriate easements for the offsite drainage improvements shall be provided prior to engineering plan approval, if not previously provided by the plat of *CanhTan Ta*.

8. Surface Water Adjustment L09V0034 is approved for this site. All conditions of approval for this adjustment shall be met prior to engineering plan approval.
9. To implement the required Best Management Practices (BMPs) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMPs for site development.
10. The following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRD&CS):
 - a. Road A shall be designed as an urban minor access street.
 - b. FRONTAGE: The frontage along S 120th Place (south side) shall be improved to the urban sub access street standard. Note that the entire length of S 120th Place to 26th Avenue S, is required to be constructed with the plat of *CanhTan Ta*; however, if the plat recording of *Boulevard Heights* precedes the *CanhTan Ta* plat, then this development shall be responsible for acquiring and dedicating all needed right-of-way and constructing a half-street road offsite (see Condition 14 for greater detail).
 - c. Any proposed joint use driveways or private access tracts shall be improved per Section 3.01 and 2.09 of the KCRS. These tracts shall be owned and maintained by the lot owners served.

A maintenance access easement across Tract B, lots 12 and 13, shall be provided to King County, for the maintenance of the Tract D Stormwater Facility.

- d. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.12 of the KCRD&CS.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation 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, 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.
13. Lots within this subdivision are subject to King County Code Chapter 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 50 percent 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.
14. Offsite access to the subdivision shall be over a full-width dedicated and half-street improved road (sufficient to provide two full vehicular travel lanes) which has been accepted by King County for maintenance. If the proposed access road has not been accepted by King County at the time of recording, then said road shall be fully bonded by the applicant of this subdivision.
15. 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.*, 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.
16. 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).
17. 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 KCRS, unless KCDOT 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 S 120th Place 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.

ORDERED December 21, 2009.



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 January 4, 2010*. If a notice of appeal is filed, the original and six 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 11, 2010*. 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 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 DECEMBER, PUBLIC HEARING ON THE BOULEVARD PARK
PRELIMINARY PLAT APPLICATION, DEPARTMENT OF DEVELOPMENT AND
ENVIRONMENTAL SERVICES FILE NO. L09P0002.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen and Bruce Whittaker representing the Department and Rob Stewart and Troy Schmeil representing the Applicant.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | DDES file no. L09P0002 |
| Exhibit No. 2 | DDES Preliminary Report, dated December 1, 2009 |
| Exhibit No. 3 | Application for Land Use Permits received March 10, 2009 |
| Exhibit No. 4 | State Environmental Policy Act (SEPA) checklist received March 10, 2009 |
| Exhibit No. 5 | SEPA Determination of Non-Significance issued November 2, 2009 |
| Exhibit No. 6 | Affidavit of Posting indicating a posting date of October 1, 2009; received by DDES on October 5, 2009 |
| Exhibit No. 7 | Preliminary plat map received October 22, 2009 |
| Exhibit No. 8 | Assessor Map SE 9-23-04 |
| Exhibit No. 9 | Conceptual Drainage plan received October 22, 2009 |
| Exhibit No. 10 | Level I Drainage Analysis dated June 26, 2009 |
| Exhibit No. 11 | Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report, dated March 6, 2009 |
| Exhibit No. 12 | Applicant letter regarding easement, dated September 10, 2009 |
| Exhibit No. 13 | Hearing Examiner Report and Decision for <i>CanhTan Ta</i> Subdivision, dated March 30, 2009 |
| Exhibit No. 14 | KCSWDM Adjustment no. L09V0034 |
| Exhibit No. 15 | DDES Memorandum received December 1, 2009 re setbacks and school walkways |