

November 17, 2010

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L09RE023**
Proposed Ordinance No. **2010-0568**

SUGARLOAF MOUNTAIN ESTATES

Major Revision (Revise Conditions) to Preliminary Plat Approval

Location: East of 307th Avenue SE, on the south side of SE Kent-Kangley Road

Applicant/ **9700 Partners LLC**
represented by Tom Barghausen
18215—72nd Avenue S
Kent, Washington 98032
Telephone: (425) 251-6222
Email: tbarghausen@barghausen.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

EXAMINER PROCEEDINGS:

Hearing Opened: November 16, 2010

Hearing Closed: November 16, 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: 9700 Partners LLC
18215 72nd Avenue S
Kent, Washington 98032
(425) 251-6222

Engineer: Barghausen Consulting Engineers
18215 72nd Avenue S
Kent Washington 98032
(425) 251-6222

STR: 33-22-07

Location: The site is generally located east of 307th Avenue SE, on the south side of SE Kent Kangley Road

Zoning: RA-5
Acreage: 630 acres
Number of Lots: 126 lots
Density: One dwelling unit per five acres
Lot Size: Approximately 2.50 acres to 3.94 acres
Proposed Use: Single Family Detached Dwellings
Sewage Disposal: On-site septic systems
Water Supply: Covington Water District
Fire District: King County Fire District No.
School District: Tahoma
Other Associated Permits: Surface Water Design Manual Adjustment file no. L08V0026
2007 KCRDCS variance (roads) file no. L08V0018

Complete Application Date: April 7, 2008 (plat), July 20, 2010 (revised plat)

2. On November 18, 2009, G. Wayne Potter on behalf of 9700 Partners LLC submitted a major revision request with DDES to delete from the Hearing Examiner's August 20, 2008 decision approving the preliminary plat application (file no. L08P0001) condition no. 22 imposing a landscape screening requirement. On June 22, 2010, this revision request was modified to also include removal of condition no. 25 dealing with clearing limits as specified within a September 4, 2008 revision to the original Examiner decision.
3. There is a mistake within the DDES staff report (exhibit no. 2) that needs to be clarified and corrected. In this modern era of five-minute cut-and-paste departmental reports, the available one-click options are of course limited to the text actually stored on the planner's hard-drive. If the text happens to be incorrect or incomplete, then the planner is faced with the painful choice of either correcting the text or just clicking anyway.

4. The recommendation at the bottom of page six of the staff report proposes for deletion strikeout language reciting conditions 22 and 25. Unfortunately, the language specified was copied verbatim from the department's earlier 2008 staff report. But, in fact, the language adopted in the 2008 Hearing Examiner decisions is different for both conditions. And it is of course this language that must be deleted, not the earlier, now obsolete staff report version.
5. The problem with respect to condition 22 is relatively straightforward. The first two sentences of condition 22 as adopted within the Examiner's August 20, 2008 decision are identical to the strikeout language provided in the staff report, with the August 20, 2008 decision version additionally offering descriptive detail as to the procedures to be followed. The recent revisions to KCC 21A.14.040.B.5 eliminate completely Type 2 landscaping screening requirements along public road frontages for clustered residential plats in the RA zone, except where there is encountered a major change of use on adjoining properties. Since Sugarloaf Mountain Estates is surrounded on all sides by other RA-5 zoned properties, the new language in KCC 21A.14.040.B.5 removes frontage landscaping requirements under all relevant scenarios. Thus the disparities between the condition 22 language in the original staff report and the more descriptive terms actually adopted by the Examiner's decision are of no consequence.
6. The situation is somewhat different with respect to condition 25. The appellate court case dealing with the legality of the county's rural clearing limits requirements had already been decided, but the appeal process had not yet been completed. So there was considerable discussion at the preliminary plat hearing on how best to accommodate this potentially fluid situation. The ultimate iteration approved on a reconsideration within a September 4, 2008 revision provided the Applicant with two options, while the original August 20, 2008 version had only a single approach. But both Hearing Examiner decision versions differed significantly from the condition 25 originally proposed within the DDES staff report.
7. The Applicant's representative at the public hearing on the revision request confirmed that except for roads and utilities, future lot clearing will be left to the discretion of the ultimate individual lot owners. This means that the informational note appearing at subsection A of condition 25, as approved within the September 4, 2008 revised decision, remains an accurate description of how the future clearing process will unfold and may continue to be useful. The remainder of condition 25 will be deleted. And condition 22 will be deleted entirely, as requested.

CONCLUSIONS:

1. If revised as specified below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.

DECISION:

The conditions of preliminary plat approval for Sugarloaf Mountain Estates (DDES file no. L08P0001), approved by the Hearing Examiner by a decision dated August 20, 2008, and modified by a revision dated September 4, 2008, are further revised as follows:

1. Condition 22 as stated within the August 20, 2008 report and decision is deleted in its entirety.

2. Condition 25, as amended within the September 4, 2008 revision to the Hearing Examiner's decision, is revised to read as follows:
 25. Future clearing of lots by individual owners shall be subject to the clearing and grading regulations in effect at the time such further clearing is proposed. A note to this effect shall be placed on the face of the final plat.

The remainder of condition 25 is deleted.

3. The other conditions stated within the August 20, 2008 report and decision of the Hearing Examiner remain in effect as originally adopted.

ORDERED this 17th day of November, 2010.



Stafford L. Smith
King County Hearing Examiner *pro tem*

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 December 1, 2010***. If a notice of appeal is filed, the original and two 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 December 8, 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 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 NOVEMBER 16, 2010, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L09RE023.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen and Bruce Whittaker, representing the Department, and Tom Barghausen and Wayne Potter representing the Applicant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services (DDES) file no. L09RE023
Exhibit No. 2	DDES Preliminary Report, dated November 16, 2010
Exhibit No. 3	Application for Major Revisions Request received June 22, 2010
Exhibit No. 4	State Environmental Policy Act (SEPA) Adoption Notice dated September 30, 2010
Exhibit No. 5	Notice of Application dated July 12, 2010
Exhibit No. 6	Affidavit of Posting indicating a posting date of July 5, 2010
Exhibit No. 7	Preliminary plat map received June 22, 2010
Exhibit No. 8	Cover letter to Application for Major Revisions Request received June 22, 2010
Exhibit No. 9	Waiver of Submittal Requirements LUSD dated June 24, 2010
Exhibit No. 10	Hearing Examiner Revision to Report and Decision dated September 4, 2008
Exhibit No. 11	Hearing Examiner Report and Decision dated August 20, 2008

SLS:vsm
L09RE023 RPT