

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

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ORDER ON MOTION FOR RECONSIDERATION

SUBJECT: Department of Local Services file no. **PLAT200002**
Proposed ordinance no.: **2021-0453**

STAR LAKE HEIGHTS
Preliminary Plat Application

Location: 3930 S 277th Place, Auburn

Applicant: Copper Ridge, LLC
represented by **Evan Mann**
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Applicant: CORE Design
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King County: Department of Local Services
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SUMMARY:

1. Keith Mullen filed an e-mail reconsideration request on February 17, 2022. Reconsideration is granted in part and denied in part.

FINDINGS:

1. **Motion.** Mr. Mullen requested reconsideration under KCC 20.22.220(A)(2), as he was concerned his comments had not been considered. He referred to five comments, Exhibits R1, R2, and R3 (submitted January 21, 2022) and Exhibits R7 and R10 (submitted February 2, 2022). He stated that the issues and/or recommendations identified in these comments should have been incorporated into the Report and Decision, pointing to KCC 20.22.220(A)(2).

In seeking reconsideration, Mr. Mullen specifically identified one issue as warranting further attention. This involves developing a trail to Valhalla Elementary School, as opposed to the route to the school proposed along plat sidewalks. He was concerned that besides his comments (Exhibits R1, R7 and R10), the Federal Way Public School district comment (Exhibit D-31) was not considered. He stated the school district recommended the pathway and asked that “the Examiner reconsider a requirement to construct a paved pathway to the school and keep in mind that KCRDCS 2.08.A.5. does allow for the county to require a developer to construct a pathway to the school.”

A comment, as opposed to a reconsideration motion, was also received from Mr. and Ms. Baughman. The comment takes the position that trail development should have been a plat condition and the issue has been insufficiently considered, and includes detail on trail location:

The focus [of the Report and Decision] ... is on the neighbors’ concerns in regards to safety issues in creating a path on the back side of their properties (which are fenced). The property behind their fences is a King County Right of Way. Old plat documents also identify a separate “10 foot pedestrian trail easement.”

No comment period follows the Report and Recommendation. However, as the trail concerns were also raised in Mr. Mullen’s motion, they are addressed in Finding 3, rendering questions over the comment’s procedural posture moot.

2. **Comments, Generally.** Some comments submitted following the hearing personalized the subject, rather than solely focusing on unresolved factual and code issues. Development brings change and is often controversial. If parties do not resolve issues amongst themselves, frustration can be reflected in the tenor of comments submitted. However, when the Examiner reviews those comments, personal disputes are irrelevant. The only question the Examiner has jurisdiction over is whether the approach taken has been demonstrated to meet requirements.

3. **Trail.** The School District’s comment (D-31), neighbors who testified for and against the trail, and written comment (both pro and con), were all considered and admitted into the record. The District identified the route as being “potentially safer” and more direct, but also stated the route proposed “met the requirements for a safe walking path”:

Student safety must be considered for all students. The concerns express by our Valhalla Elementary neighbor regarding the safe walking path from the proposed development to Valhalla Elementary have been reviewed by our transportation staff. While the originally proposed route met the requirements for a safe walking path, upon review of the proposed path by our Valhalla neighbor this alternate route provide[s] a more direct and potentially safer access to the campus.

The Applicant compared the two routes:

Option 1: a well-lit, ADA compliant concrete sidewalk that extends from the doorstep of all homes in the proposed plat to the doorstep of Valhalla Elementary. This route measures approximately 1,200 linear feet or less than a quarter mile. It also passes many homes with residents who can see and observe children to ensure they arrive at school safely or intervene should any problem arise.

Option 2: an unlit path that puts children in the rear yards of homeowners where there are fewer people to observe should anything go wrong. There are significant brush patches and blind spots in the rear of these homes that would easily conceal someone (see attached). And assuming the children still enter the front door of the school, this route would measure over 600 linear feet. Half the distance but with a significant higher security risk for the children and adjacent homeowners.¹

The Applicant identified opposition from neighbors living along the trail. “You heard compelling testimony in the hearing from” a “neighbor directly adjacent to the path being suggested stating” their opposition. You heard “additional testimony from” another neighbor “stating his opposition to the connection as they have had prowlers use the paths to skirt between neighborhoods.”² The Report and Decision concluded in Finding 9, paragraph three:

There was comment on the walking route to the elementary school. The route is a well-lit, ADA-compliant sidewalk that extends from the doorstep of all plat homes. The route is less than

¹ Exhibit A1.

² Exhibit A1.

a quarter mile. It is viewable from plat homes. The trail request made in public comment, though shorter at about 600 feet, is for an unlit path with no “eyes on the street” and presents privacy and security concerns for homes backing the route. [FN omitted] For these reasons, several neighbors opposed this latter approach. The route the Applicant proposed complies with requirements and provides safe walking conditions.

Trail proponents, including Mr. Mullen, and Mr. and Ms. Baughman, articulated their rationale for developing the alternate route. The trail would provide benefits to some, though not to others. However, the central concern is route capacity to safely serve the plat’s school children. This will be a pedestrian route for elementary school children, making “eyes on the street” a particularly important factor. The proposed sidewalk route addresses this, and as the School District stated, it is a safe walking route.

4. **Other Concerns, Generally.** Mr. Mullens’ comments have been extensive. Detailed responses were provided throughout the review process (*see e.g.*, Exhibits D-9 and D-11), and at the hearing, where testimony from expert witnesses addressed concerns raised. As the record was kept open for several days, and additional comment from Mr. Mullen and other hearing participants was received, those comments and responses were also reviewed.

Mr. Mullen requests further consideration of Exhibits R1-R3, R7 and 10. Exhibit R1 provides 14 pages of comment, with Exhibits R2 and R3 attaching photographs. Exhibit R7 provides 11 pages of comment, with R10 providing three pages of comment. The concerns vary, but can be grouped into several categories. In addition to the trail concern addressed above, other concerns relate to transportation infrastructure, stormwater, open space, technical questions, utilities, and fire service. The Applicant addressed comments received (*see e.g.*, Exhibits A-1 through A-4). Based on this record, the Report and Decision determined that with conditions, code requirements were met and adequate infrastructure would serve the plat. *See e.g.*, Report and Decision, Findings 11-14 (transportation); Finding 10 (stormwater); Finding 15, including FN 22³ (utilities/fire). As detailed below, this order does not disturb these findings.

5. **Specific Concerns.**

- 5.1 Access. The Applicant’s traffic engineer addressed site access from 40th Ave. S from Star Lake Road (requested by petitions admitted into the record as Exhibit D-8). Based on engineering review, due to grades and site distance, that access was determined to be unsafe. Efficient and safe

³ FN 22 (“Exhibit D2 (Staff Report), p. 9; Exhibit D29 (Certificate of Sewer Availability); Exhibit D30 (Certificate of Water Availability). King County Fire Flow Standards can be met; before final plat recording the water service facilities will be reviewed and approved to confirm same. South King Fire & Rescue District can serve the project. Exhibit D28. Testimony, Ms. Cui and Mr. Mann. *See also* Conditions 7 and 8.”).

access is available through S 277th Place. This was addressed at the hearing and in written comment. *See* Finding 11, including FN 19, referencing testimony from the engineer.⁴

- 5.2 Cul-De-Sac. The plat will extend S. 277th Pl. The standard length is 600 feet, though variances are authorized (KCRDCS Section 2.08.A.4). As Finding 13 addresses,⁵ a variance was granted. The applicant submitted a variance request for the length of a cul-de-sac which the County Road Engineer reviewed and approved. As detailed in hearing testimony, the variance was found appropriate, as it results in a safer and more efficient road network.⁶
- 5.3 S. 277th Place. As detailed in Finding 11, the plat includes improvements to S. 277th Place, with improvements to ensure it adequately serves the plat and provides a 24-foot wide drivable surface, addressing concerns with roadway conditions. *See also* Condition 6 (“All construction and upgrading of public and private roads shall be done in accordance with the 2016 King County Road Design and Construction Standards (KCRDCS) established and adopted by Ordinance 18420, as amended.”).
- 5.4 Star Lake Road Improvements. Comment requested that the Applicant widen Star Lake Road along the property. The plat does not access to Star Lake Road due to grades, road alignments, and sight distance issues. Without impacts triggering the need for corresponding improvements, there is not a justification for the requested improvements.
- 5.5 Stormwater. The plat must meet all King County Stormwater Design Manual requirements (Condition 10). The Applicant’s engineer reviewed stormwater downstream as part of the preliminary storm report. The concerns identified (exit pipe size and storm drain conditions) are known conditions and will be addressed during engineering review.⁷ The comment’s stormwater run-off figure was determined to be incorrect, and:

[t]he project is meeting flow control standards which means matching both the peak flows and durations for a forested condition despite being developed Based on our calculations, we are not increasing flows to the Star Lake Outlet. The peak flow in the developed conditions

⁴ FN 19 references Exhibit D1 (Staff Report), pp. 7-8; Exhibit D2 (Plat); Testimony, Mr. Mann and Mr. Heath.

⁵ Finding 13 (“The Applicant obtained a variance (VARR21-0008) to the 2016 King County Road Design and Construction Standards for length of cul-de-sac (S 277th Place). Street improvement design was detailed in testimony from a traffic expert (Mr. Heath), on the plat sheets (Exhibit D2), and in the Staff Report (Exhibit D1).”).

⁶ *See e.g.* hearing testimony, Mr. Mann and Mr. Heath.

⁷ Exhibit A4.

will be about equal to the existing conditions and discussed in the drainage adjustment.

We are proposing to discharge to the catch basin on the south side of Star Lake Road and will not disturb the outlet of Star Lake. However, we will comply with the drainage improvements that County requires as part of this project.⁸

As Finding 10 details, and as set forth in the Staff Report, p. 7, which the Report and Decision incorporates, stormwater has been designed to avoid adversely impacting Star Lake:

The site currently contains two on-site subbasins discharging towards north and south. The two flow paths converge at the Star Lake Outlet within a quarter-mile downstream from the site. The project requested to maintain only the north discharge location through a drainage adjustment record VARD21-0002 for deviating from Core Requirement #1 and demonstrated the project will release the detained runoff at a flow rate matching the current condition. See Exhibit 23 for the approval of the drainage adjustment request.

A Level 1 downstream analysis was performed for the proposed subdivision pursuant to Core Requirements #2 of the KCSWDM. No downstream nuisances such as erosion, sedimentation, under capacity and flooding were found. The project is not anticipated to create new downstream problems. The analysis can be found in the preliminary Technical Information Report (TIR) attached hereto as Exhibit 24.

The project proposes a combined flow control/water quality underground stormwater wetvault in Tract B. The vault is designed to release mitigated flows directly to an existing catch basin and drainage conveyance system at the Star Lake Road. Conservation Flow Control and Basic Water Quality treatments will be provided for both facilities in accordance with KCSWDM. The analysis along with hydraulic modeling are included in the TIR (Exhibit 24).

The Applicant demonstrated the plat meets County stormwater requirements.

⁸ Exhibit A-3.

5.6 Open Space Fee-In-Lieu. Finding 16 found open space requirements were met. Considerable detail was provided on the fee-in-lieu open space calculation. The fee calculation will be done by King County in a post-developed condition and that amount will be set at that time, as described in Condition 17:

- “In accordance with KCC 21A.14.185, the developer may choose to pay a fee-in-lieu of providing the on-site recreation space. The Department of Parks and Natural Resources has agreed to accept the fee-in-lieu payment. To obtain final plat approval, the developer shall provide payment of an amount agreed upon by the Department of Natural Resources and Parks, based on an estimate of the market value of the required recreation land area after development.”

The materials referenced in the comment are to a preliminary estimate. The actual fee will be calculated as set forth in the KCC and in the plat conditions.

5.7 Right-of-Way Vacation. Ordinance 2021-0322, Vacation of S. 278th St. ROW, resulted in adding 4,360 square feet of land area to the Applicant’s parcel. The Applicant was not a party to this action, only learning of this on January 21, 2022, with the ordinance recorded on December 30, 2021. The vacated right-of-way will be deeded by the Applicant consistent with the County’s action. Ordinance 2021-0322 does not impact or alter the plat.⁹

5.8 Mailboxes. Concern was expressed about mailbox location outside the plat. The Applicant noted: “Mailbox locations are established during final engineering review and new CBU mailboxes are always placed within the limits of the new development. No impact is anticipated. USPS has sole responsibility for locating mailboxes.”¹⁰

5.9 Water Main. There was concern that (Exhibit D-2) identifies the existing water main at the end of S. 277th Pl. as an 8-inch main. The water availability certificate (Exhibit D-30) identifies it as 6 inches in diameter. As the Report and Decision address, the water district can serve the plat. Water main diameter is a scrivener’s error, as hearing testimony detailed (Mr. Mann).

5.10 Fire Code. Comment identified fire approval as being for 20 lots and expired, and raised concerns about fire access. The Fire Department has reviewed current plans. Final Fire Department review and approval is

⁹ Exhibit A4.

¹⁰ Exhibit A4.

required, as the Report and Decision addresses, and as addressed in hearing testimony (Mr. Mann; Ms. Cui). *See* Finding 15 and FN 22. These matters are addressed consistent with standard platting practices, as detailed in Conditions 8 and 9:

- “The Applicant must obtain the approval of the King County Deputy Fire Marshal for the adequacy of the fire hydrant, water main, and fire flow standards of KCC Chapter 17.08. Any future residences are required to be sprinklered unless otherwise approved by the King County Fire Marshal or designee.”
- “Compliance with the requirements of approval from the King County Fire Marshal may require wider roadway sections than are called for in the 2016 KCRDS.”

6. **Review, Generally.** Comments provided throughout plat review were extensive. Several hearing comments raised issues addressed by code or which have been resolved. Some comments identified alternative approaches for addressing certain issues. However, expert witnesses and technical analysis explained how these issues were addressed, including on stormwater, the school route, and other transportation and engineering matters. The record was replete with detail addressing comment, with multiple rounds of comment provided. With 25-lots proposed on a plat consistent with minimum and maximum density requirements, the scrutiny given the proposal was considerable.

CONCLUSIONS:

1. The Report and Decision is amended to include Supplemental Findings 1-6.
2. Supplemental Findings 1-6 provide added detail on the public comments which informed the Report and Decision. They do not change the Report and Decision’s legal conclusions or conditions.

DECISION:

1. The Examiner denies reconsideration regarding the request to require the alternative trail route to Valhalla Elementary, but amends the Report and Decision to include Supplemental Findings 1-6.

DATED March 1, 2022.



Susan Drummond
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

A person appeals the Examiner’s Report and Decision, as amended by this Order on Motion for Reconsideration, by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD). Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. KCC 20.22.230 also requires that the appellant provide copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s decision.

Prior to the close of business (4:30 p.m.) on *March 25, 2022*, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. If the Office of the Clerk is not officially open on the specified closing date, delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

Unless both a timely and sufficient appeal statement and filing fee are filed by *March 25, 2022*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *March 25, 2022*, the Examiner will notify all parties and interested persons and provide information about “next steps.”