February 27, 2025

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **SPLT230001**

LAKE DESIRE
Short Plat Appeal

Location: 17232 174th Avenue NE, Renton

Applicant: North Lake Desire, LLC
represented by **Steven J. Gillespie**
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Appellants: **Charles & Teresa Linders**
[redacted]
Renton, WA 98058
Telephone: [redacted]
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Appellants: **Mark Dryer & Sonja Kairis**
[redacted]
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Email: [redacted]

King County: Department of Local Services
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FINDINGS AND CONCLUSIONS:

Overview

1. The Department of Local Services (Local Services) approved a preliminary short plat to add eight homesites within the urban growth boundary, near Lake Desire. Two sets of neighbors appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeals. We are unable to alter the zoning/density standards that so frustrates the neighbors, and Appellants have not shown the preliminary approval violates any other applicable requirement.

Background

2. For a full plat (which inside the urban growth area means subdividing property into over nine lots), an applicant has the burden to show, at an examiner hearing, conformance with the law. Anyone from the public can come into that hearing and raise whatever challenges or topics they want.

3. Conversely, for today's *short* plat, an appellant has the burden to prove that Local Services' approval is inconsistent with applicable laws, regulations, and adopted policies. And the scope of an appeal must be "limited to matters or issues raised in the initial appeal and any amendment to the appeal the examiner may authorize." KCC 20.22.080.G.

4. Two sets of appellants timely appealed Local Services' October 14, 2024, short subdivision preliminary approval ("Decision") and paid the requisite appeal fee: Charles and Teresa Linders (Linders), and Sonja Kairis and Mark Dryer (Kairis).[1] We held a December 17, prehearing conference. We then issued a prehearing order (Order) setting the issues for hearing as density, parking/access/street width/street lighting, drainage (quantity and quality), wildlife, and critical areas.

5. Over the Applicant's objection, we allowed the Linders and Ms. Karis until January 15, 2025, to file an amended appeal statement and add new appeal issues. Ms. Kairis filed a timely amended appeal statement, asserting that the circa-2004 planning changes that resulted in the subject property being zoned R-6 were arbitrary; we incorporate that into the density discussion below. That capped our hearing issues.[2]

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[1] Both Linders and Ms. Kairis appeared at hearing and offered testimony and argument, Mr. Dryer did not.

[2] The Order required any appeal amendments by January 15, initial exhibits by January 28, and rebuttal exhibits by February 5. On February 4, the Linders submitted their initial exhibits. We admit those. However, in there the Linders attempted to challenge a portion of the Decision (G.3) related to school facilities, access, and impact fees. Ex. L4. School walking routes/bus stops is almost always an issue we probe in a public hearing on a full subdivision; here the Applicant completed a schools walkway report, which we required Local Services to provide to Appellants in December, along with the entire case file. *See* Ex. A12. Neither the initial Linders appeal, the initial Kairis appeal, nor the timely Kairis amendment raised this issue. The initial Kairis appeal raised parking for visitors to the plat's future houses, alleged road encroachment, joint use driveways, increased traffic congestion, and street lighting—issues we summarized in our Order

6. We held the hearing on February 12. Ms. Kairis and her witness Heather Stafford; the Linders; Local Services' Brian Lee, Rebecca Burke, and Joseph Pursley; and the Applicants' Mark Plog and Ty Pendergraft, all testified.

Analysis

Density (Broader Concerns)

7. The crux of the neighbors' case is that the subject parcel *should* not have been zoned R-6 circa 2004. Neighbors involved in the original comprehensive planning process believed that the R-6 line ran along 174th Avenue NE (174th), with the properties below 174th R-6 and the properties above 174th R-1. Instead, plan adoption resulted in properties (including the subject parcel) fronting on the northerly edge of 174th also being zoned R-6. Ex. L1 at 001–02.

8. State law requires challenges to comprehensive plan amendments, including designations or amendments of urban growth areas, be lodged with the Growth Management Hearings Board within 60 days of publication (i.e., within two months of the circa 2004 zoning change adoption here that designated the subject parcel as R-6). RCW 36.70A.290(2). Neither Local Services in 2024, nor an examiner in 2025, has authority to revisit that adoption.

9. Most land use applications "shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all of the requirements of this chapter." KCC 20.20.070.A. That requirement is strongest for a short plat adding housing within the urban growth boundary. State law calls out three topics where the existing local regulations "shall be determinative" during project review; one of those is "Density of residential development in urban growth areas." RCW 36.70B.030(2)(b). When reviewing the Applicant's short plat submittal, Local Services had no wiggle room to rethink whether R-6 zoning makes sense for the subject parcel. And no examiner, nor any other local government official, has the authority to defy the state's command. We do not get to re-envision whether the property *should* have been zoned R-6.

10. Similarly, there are certain types of applications, where more discretionary and policy criteria come into play. For example, an applicant seeking a *conditional* use permit must show the use "is compatible with the character and appearance of an existing, or proposed development in the vicinity." KCC 21A.44.040.A. Those are not criterion for an *allowed* use such as a short subdivision in the urban growth area. If the Applicant's proposal meets the adopted density requirements and other regulations, neither Local

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as "parking/access/street width/street lighting." February 4 was about three weeks too late for the Linders to inject a new appeal issue. KCC 20.22.080.G.

Services in its review, nor we in this appeal, get to determine whether the proposed development here is consistent with the history, style, and feel of the neighborhood.[3]

Density (Controlling Criteria)

11. For residential development within the urban growth boundary, there is both at minimum and maximum residential density for a parcel in a specific zone.

12. At our prehearing conference, it appeared Local Services and the Applicant were asserting that critical areas and buffers were not, as a matter of law, subtracted out from *minimum* density calculations. Appellants disputed this, and in our prehearing order we wrote that Appellants appeared to be correct; we required Local Services to address that in its prehearing staff report.[4]

13. Local Services did, and submitted a revised residential density worksheet, which points to the applicable code provisions and calculates items like site area, base density, recreation space, and net buildable area (i.e., excluding dedicated public rights-of-way, critical areas/buffers detention ponds, utility quarters, etc.). Both residential density worksheets arrived at eight dwelling units as the *minimum* number allowed on the subject property.[5] Appellants asked solid questions about how critical area buffers and steep slopes were factored into net buildable acres and minimum density calculations. Ultimately, we conclude that Local Services correctly calculated the minimum density for this site at eight homes, meaning that even if the Applicant tried to scale back their proposal and create fewer than eight homes sites, it would not be allowed.

14. Moreover, the application Local Services reviewed, Appellants challenge, and we weigh, is for eight homesites. That is less than that nine lots the Applicant could have pursued within the short subdivision process, and eleven (or more) lots they could have pursued if they had gone through the regular subdivision process. Exs. D1 at 003, D3 at 002 & A4 at 002. *See also* KCC 19A.04.310. Appellants have not demonstrated that Local Services' approval violates a density-related standard.

Parking/Access/Street Width/Street Lighting

15. Appellants discussed the cumulative traffic impacts of other recently-completed and in-the-pipeline projects. Cumulative impacts are generally a part of the State Environmental Policy Act (SEPA) analysis an agency is required to conduct for many development

[3] Ms. Linders provided a thoroughly informative presentation on planet-warming, including how clearing trees and adding impervious surface (like this short plat development would do) exacerbates that. There is currently not an adopted regulation that incorporates global warming consideration into the short subdivision review process.
[4] We noted that KCC 21A.12.085 explains how to calculate minimum density, starting with multiplying base density by "the net buildable area of the project site." And KCC 21A.06.797 defines the "net buildable area" as the "site area" [which KCC 21A.06.1172 defines as the "the total horizontal area of a project site"], but then subtracting out "Critical areas and their buffers to the extent they are required by K.C.C. chapter 21A.24 to remain undeveloped."
[5] Compare exhibit A4 with the revised exhibit D3. The minimum dwelling unit number inched up slightly, from 7.52 to 7.76. Where a calculation results in a fraction, for subdivisions within the urban growth area the fraction must rounded to the nearest whole number. KCC 21A.12.070.D & .E. So, eight dwelling units is the minimum allowed here.

applications. However, *short* subdivisions of up to nine units within an urban growth area are exempt from SEPA review. RCW 58.17.020(6); WAC 197-11-800(1) & (6)(d).

16. One of the concerns raised in the appeal and discussed at hearing was 174th's width—is is broad enough to accommodate the Applicant's necessary road improvements? The Applicant is required to improve a half-street, along the entire plat frontage along both 174th and E Lake Desire Drive (the Drive). That means at least ten feet of asphalt, a foot of curb/gutter, and five feet of sidewalk on its side of its 20-foot side of 174th and the Drive.[6] There is sufficient room for those 16 or so feet on the Applicant's 20 feet of 174th's 40-foot right-of-way and the Applicant's 30 feet of the Drive's 60-foot. Rebecca Burke testimony; Ex. D4 at 003, ¶ F.2 & 006, ¶ J.3

17. Appellants raised concerns about whether a built-out short plat would have sufficient room to accommodate guest parking. They described parking in the vicinity as limited. There is a boat launch parking area just on the other side of the 174th/Drive intersection, but that often fills up during warmer months, and there is no room for overflow parking along 174th or the Drive. Ex. D4 at 003, ¶ F.2 & 006, ¶ J.3. Although building permits will likely not be submitted until after the final plat approval and infrastructure improvements are installed, homes will likely be built with a two-car garage, set, back 20 feet from the interior access road (i.e. room for four parked cars on each lot in addition to the garage).[7]

18. Adding homesites lots always means adding cars, and Appellants raise some solid, neighborhood-specific concerns here. But ultimately Appellants have not demonstrated that Local Services' approval violates a road-related standard.

Runoff

19. Appellants raise both water quantity and water quality concerns related to runoff from the Applicant's proposal.

20. Ms. Kairis explained the flooding she has experienced in her garage after a neighbor—north of the subject property and northwest of her— him redevelop that property.[8] Her concern is that Applicant's development would exacerbate that. The northerly property drains almost due east, and a little south, directly towards Ms. Kairis's property. Ex. A31 at 010. And that neighbor installed a driveway that appears to channel water east towards the Kairis property. Mark Plog testimony & Ex. A33. Conversely, the subject property was surveyed, with contour lines (and thus the natural drainage) heading almost entirely south/southeast towards the 174th/Drive intersection, not east towards the Kairis property. Ex. A31 at 010.

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[6] If a property on the other side of either street is later developed, that applicant would be responsible for improvements on its side of the street.

[7] Street lighting was mentioned in an appeal document but not revisited in the exhibits or pursued at hearing.

[8] Ms. Kairis had not filed a drainage complaint with the County. She may wish to do so at https://kingcounty.gov/en/dept/dnrp/nature-recreation/environment-ecology-conservation/stormwater-surface-water-management/drainage-problems-assistance/drainage-assistance/drainage-assistance. During preliminary short plat review here, there was no drainage complaint in the previous decade for the Applicant or Local Services to study. In general, an applicant is not required to solve flooding problems, but it is required not to exacerbate them.

21. Mr. Linders is a Lake Desire steward. He discussed problems with eutrophication from him existing runoff; additional runoff from this short plat could exacerbate those problems. Ms. Karis addressed this as well. Ex. K1. Him

22. As Local Services' Ms. Burke extensively detailed, the Applicant will be required to build out a system to collect runoff from the short plat's impervious surfaces and transport it downhill into a wet vault at the southern edge of the property, and from there into a sand filter, before being tightlined into the Lake. Both the state's Department of Ecology and the County's surface water design manual have reviewed and approved sand filters in general for sensitive lake environments like Lake Desire.

23. The system must be built both to treat the water (quality) and to release water during 100-year flood conditions at a slower rate than would runoff the subject property pre-development (quantity). The calculation assumes the subject property is entirely forested; that builds in an added protection here, because the actual subject property has been partially cleared for a single-family home, driveway, other impervious surfaces (the runoff from which is currently not being treated), and lawn replacing forest. Due to high Lake Desire water levels, the Applicant must install a larger-than-normally-required sand filter. Burke testimony; Ex. A31. And during the build out, current harder soils, such as that underlaying the lawn area, will be amended with more water-absorbent organic material. Plog testimony.

24. Given the complexities involved with the sand filter (which Mr. Linders pointed out), Local Services required several cycles of engineering review during this preliminary short plat process, more than it normally would. The drainage system will still need to be ironed out during final engineering review and *final* short plat approval. Yet for purposes of this preliminary plat approval, the current system and layout appears feasible. Burke testimony; Ex. A31; Ex. D4 at 003, ¶ F.3 & 005–06 at ¶ J.2; Ex. L3. Appellants have not demonstrated that Local Services' approval violates a runoff-related standard.

Wildlife

25. Absent something like a listed species/critical habitat on the subject property (and none was identified during short plat review here), there is no general wildlife retention/displacement standard. KCC 21.24.382. Prior to any clearing or grading the applicant takes in connection with this project, the Applicant must undertake a wildlife survey. Ex. D4 at 002, ¶ D.7 & page 007 at ¶ J.9.e. That is requirement for a later stage of the project, not the current preliminary approval.

26. There is, however, a mapped Wildlife Habitat Network (Network) associated with Lake Desire that overlaps the southern tip of the property. Ex. D4 at 002, ¶ D.7. No structures—and the drainage wet vault/sand filter discussed above qualify as "structures"—are allowed in that area or the 15-foot building setback that extends further north on the property.

27. Appellants correctly point out that, per the Applicant's Technical Information Report (Report) initially submitted as an exhibit for hearing, the storm water wet vault and sand filter extended into the Network, or at least into the 15-foot building setback line from

that Network. It was a good catch, but it turned out that Local Services had earlier required the Applicant to revise its Report *four* times. The final Report correctly identified the Network and placed the vault and filter at least 15 feet back from the Network Edge, and the Applicant will be required to forest what is currently only a lawned area. The original proposal and the approved proposal are depicted below.[9]

28. The Applicant will need to place the Network buffer in a critical area tract on the engineering plans and final plat and not build a structure within 15 feet of that. D4 at 004 at 007–08, ¶ J.9.a–.b. Yet at this point in the review process, Appellants have not demonstrated that Local Services' approval violates a wildlife-related standard.

Other Critical Areas

29. In addition to the Network, there is a Category III wetland off (and east) of the subject property, the buffer of which extends across a portion of the eastern edge of the property. Ex. A31 at 003 (small purple semicircle). It will be placed in a critical area tract and protected with critical areas fencing (passable by wildlife) and signage. Ex. D4 at 002, ¶ D.3 & 007–08, ¶ J.9. And beyond that there is an additional 15-foot building setback line, in which no structures are permitted. Appellants asked good questions related to the wetland, its buffer, and building setback line. Local Services' Joseph Pursley provided solid answers, including how the wetland was rated and how the final buffer was calculated.[10] Appellants have not demonstrated that Local Services' approval violates a critical area-related standard.

[9] *Compare* Ex. A15 at 013 (October 2022) *with* Ex. A31 at 001, 013 (April 2024) (orange circle added). At hearing, Local Services submitted the second Report (July 2023); to avoid a confusing record, we do not admit that.

[10] The off-site wetland here, a Category III wetlands with a habitat score of five, has an 80-foot buffer for high-impact adjacent uses, with a 60-foot buffer for moderate impact uses if the Applicants' future development meets detailed criteria. Ex. A7 at 001; KCC 21A.24.325.A.1 & C.6.2.b.

DECISION:

We deny both appeals.

ORDERED February 27, 2025.

David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE FEBRUARY 13, 2025, HEARING IN THE APPEAL OF LAKE DESIRE, DEPARTMENT OF LOCAL SERVICES FILE NO. SPLT230001

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sonya Kairis, Charles Linders, Teresa Linders, Heather Stafford, Joseph Pursley, Rebecca Burke, Brian Lee, Steven Gillespie, Mark Plog, and Ty Pendergraft. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered by Local Services and entered into the record:

Exhibit no. D1	Staff Report
Exhibit no. D2	1994 Adopted Comprehensive Plan
Exhibit no. D3	Revised Residential Density Worksheet
Exhibit no. D4	SPLT23-0001 Report and Decision
Exhibit no. D5	Revised Preliminary Short Plat Civil Plans
Exhibit no. D6	Revised Preliminary Short Plat Plans
Exhibit no. D7	~~Revised Technical Information Report (July 2023)~~ (*not admitted*)

The following exhibits were offered by the Applicant and entered into the record:

Exhibit no. A1.	Application Checklist
Exhibit no. A2.	Assessor's Map
Exhibit no. A3.	Completed Land Use App North Lk desire SP

Exhibit no. A4.	Completed Residential Density Worksheet
Exhibit no. A5.	Completed-Affidavit-Concerning-Critical-Areas-Compliance
Exhibit no. A6.	Completed-Applicant-Status-Corporation
Exhibit no. A7.	Critical Areas Designation
Exhibit no. A8.	Fire District Receipt Parcel 252305-9024
Exhibit no. A9.	Lake Desire SEPA Checklist
Exhibit no. A10.	Preliminary Short Plat Plan Set
Exhibit no. A11.	Proof of Legal Lot (Deed)
Exhibit no. A12.	Schools Walkway Report
Exhibit no. A13.	Sewer Availability – Soos Creek
Exhibit no. A14.	Short Plat Map
Exhibit no. A15.	Technical Information Report (October 2022)
Exhibit no. A16.	Water Availability – Soos Creek
Exhibit no. A17.	SPLT23-0001 Seattle Times – Legal Ad
Exhibit no. A18.	SPLT23-0001 Sound Publishing – Legal Ad
Exhibit no. A19.	image0 [photograph of notice board]
Exhibit no. A20.	Mar 21 Doc 2 [completed affidavit of posting]
Exhibit no. A21.	SPLT23-0001-Site-Plans
Exhibit no. A22.	SPLT23-0001 Complete Application Letter
Exhibit no. A23.	SPLT23 A001 North Lake Desire NOA [Notice of Application]
Exhibit no. A24.	Notice of Decision for SPLT23-0001 North Lake Desire Short Subdivision
Exhibit no. A25.	Notice of Decision for SPLT23-0001 North Lake Desire Short Subdivision [2]
Exhibit no. A26.	Parties of Record 7.24.2024
Exhibit no. A27.	SPLT23-0001 NOD [Notice of Decision]
Exhibit no. A28.	SPLT23-0001 Preliminary Approval Letter
Exhibit no. A29.	SPLT23-0001 Report and Decision
Exhibit no. A30.	SPLT23-0001Revised Preliminary Short Plat 7.19.2024 2
Exhibit no. A31.	Technical Information Report (April 2024)
Exhibit no. A32.	iMap screenshot of Parcel Viewer
Exhibit no. A33.	Photo of driveway to property to the north of subject parcel

The following exhibits were offered by Appellants Dryer/Kairis and entered into the record:

Exhibit no. K1.	Lake Desire Data
Exhibit no. K2.	Short Plat surrounding views

The following exhibits were offered by Appellants Linders and entered into the record:

Exhibit no. L1.	Not Compatible with the community
Exhibit no. L2.	Rebuttal Access and Internal Circulation
Exhibit no. L3.	Rebuttal to Drainage
Exhibit no. L4.	Rebuttal School Facilities, Access, and Impact Fees
Exhibit no. L5.	Seattle Times Cartoon
Exhibit no. L6.	Sustainable Building

February 27, 2025

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **SPLT230001**

LAKE DESIRE
Short Plat Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ placed with the United States Postal Service, Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED February 27, 2025.

Lauren Olson

Lauren Olson
Legislative Secretary

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Baccetti, Cindy
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Burke, Rebecca
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