

October 10, 2019

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

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**REPORT AND DECISION**

SUBJECT: Department of Local Services file no. **PLAT180003**  
Proposed ordinance no.: **2019-0357**

**HARVEY PLAT**

Preliminary Plat Application

Location: between NE 175th Street NE 172nd Street, west of 164th Avenue  
NE, Woodinville

Applicant: Woodinville 4 LLC  
*represented by* **Mike Walsh**  
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King County: Department of Local Services  
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**FINDINGS & CONCLUSIONS:**

**Overview**

1. The Harvey site abuts, and sits just south of, Woodinville city limits. Zoned RA-2.5, Woodinville 4 LLC (Applicant) proposes to subdivide the approximately 14.5 acres into five lots, using three transferable development rights (TDRs) to achieve the maximum allowable density. The Department of Local Services (Department) recommends approval, with conditions. Neighbors participated actively at our September 26 hearing

and provided informed perspectives on density, wildlife displacement, construction impacts, and road issues. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the arguments and the relevant law, we approve the preliminary plat, but with additional conditions.

### **Density**

2. The main thrust of our inquiry and the neighbor's concern is density. Despite the moniker RA-2.5 (which would seem to indicate one home per 2.5 acres), the neighbors are correct that the RA-2.5 zone generally allows only one home per 5 acres. However, a more detailed code analysis shows that one home per 5 acres (i.e. 0.2 dwelling units per acre) is only the *base* density in the RA-2.5 zone. KCC 21A.12.030.A. The *maximum* density of one home per 2.5 acres (i.e. 0.4 dwelling units per acre) is achievable through the use of TDRs. KCC 21A.12.030.A & B.1. To boost the allowable units on an RA-2.5 parcel, the TDRs must come from a rural forest focus area. KCC 21A.12.030.B.20.
3. The Department's report sets out the Growth Management Act (GMA) and Comprehensive Plan (Comp Plan) framework that supports TDR use here. The controlling code subsection is KCC 21A.37.030.A.3, which requires that receiving sites like Harvey be:
  - a. must be eligible to be served by domestic Group A public water service;
  - b. must be located within one-quarter mile of an existing predominant pattern of rural lots smaller than five acres in size;
  - c. must not adversely impact regionally or locally significant resource areas or critical areas;
  - d. must not require public services and facilities to be extended to create or encourage a new pattern of smaller lots;
  - e. must not be located within rural forest focus areas; and
  - f. must not be located on Vashon Island or Maury Island.
4. The Applicant sets out concisely how it meets KCC 21A.37.030.A.3. Ex. 13.

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<sup>1</sup> KCC 21A.37.030.E states that the receiving property may not be within the shoreline jurisdiction or on Vashon-Maury Island. Harvey is not near a shoreline or on Vashon-Maury Island.

- The Applicant (a) has obtained a certificate of water availability from the Woodinville Water District.
  - A vicinity map shows that (b) the predominant pattern of lots within a quarter mile are well below five acres. This looks especially true in the immediate vicinity, where the average lot appears to be *smaller* than the average Harvey lot will be. By the Department’s estimate the area surrounding the site consists of parcels from 0.75 to 2 acres, while Harvey’s lots will be between 1.8 and 4.27 acres.
  - The Department’s critical areas study determined (c) there are no critical areas on or adjacent to the site, and no one has pointed to any regionally or locally significant resources on or adjacent to the site.
  - Aside from the water service required by (a), there is no planned (d) public services or facilities. The lots will be served by on-site septic, not a sewer extension. And the surrounding lots are, on average, *already* smaller than the developed Harvey lots will be. So Harvey cannot “encourage” future small-lot development.
  - The site is (e) not in a rural forest focus areas, and the Applicant has obtained its TDRs from a rural forest focus area, thus meeting KCC 21A.12.030.B.20’s requirement.
  - Harvey is (f) miles from Vashon-Maury Island.
5. The above in no way invalidates the neighbors’ concerns. Their expectations flowed from their understanding that Harvey could only be developed at one home per 5 acres. Only by drilling down into the code’s minutia would one discover that a home per 2.5 acres is achievable here through TDRs. As the Applicant has obtained the requisite TDRs and shown compliance with the other applicable code provisions, the Applicant is entitled—provided it meets other plat requirements—to develop five homesites.

### Wildlife

6. The property, especially the eastern portion, is heavily wooded with native trees, some of them fairly mature, and native second-story vegetation and groundcover. Yet the Applicant listed only “songbirds” under the question asking about animals known to be on or near the site, and the Department opined that animal populations and species are limited by nearby development. Ex. 4 at 7; Ex. 2 at 2. The neighbors were significantly more persuasive in their observations of (in addition to songbirds) deer, bobcats, coyotes, rabbits, raccoons, squirrels, possums, owls, and even a bear on-site. And the neighbors are correct that none of the (at least flightless) animals on the site will likely make it out beyond Carnation to take advantage of the natural area habit being preserved on the TDR sending sites.
7. There is no way to sugarcoat it. The flipside of a feature that makes Harvey eligible to employ TDRs—the small lots surrounding Harvey—means there is no obvious place for

creatures to relocate to once the largest undeveloped property anywhere in the vicinity is built out. Area wildlife will find it harder to thrive and maybe to survive.

8. Certainly, there is a policy rationale, a method to explain what may look like madness. Just as GMA in some sense sacrifices urban areas to preserve more environmentally valuable rural areas by channeling development away from rural areas and into cities, the Comp Plan and TDR program in some sense sacrifice suburban areas to preserve even more environmentally valuable rural forest focus areas.
9. The previous paragraph is debatable and there are obviously available counter considerations. However, what is not debatable is that our role today is limited to determining whether this application meets the codes in place on the day the Applicant submitted a completed application, not to decree how an ideal code would read. Outside the scenario of threatened or endangered species or something like a mapped wildlife corridor, there is no requirement that a developer preserve wildlife habitat. And we have no authority to create one.

### **Construction Impacts**

10. Neighbors expressed concerns over impacts from construction, especially road blockage, noise disruption, trespass, and damage to private property. We in no way minimize concerns over the hassles that always accompany construction. But the Road Standards are in place partly to set the requirements for road construction activities, and those are the controlling standards. We do address two subtopics.
11. Construction noise is often the biggest annoyance. KCC 12.86.520 restricts construction noise to certain hours. For most construction activities, operating hours are between 7 AM and 10 PM on weekdays and 9 AM and 8 PM on weekends. For heavy equipment like bulldozers, graders, and compactors, operating hours are limited to 7 AM to 7 PM on weekdays and between 9 AM and 7 PM on weekends. And for the most intensive, impact-type equipment such as pavement breakers, jackhammers, or sandblasting, operating hours are restricted to 8 AM to 5 PM on weekdays and 9 AM to 5 PM on weekends.
12. Neighbors described survey crews trespassing on private property. Backwards-looking, the only legal explanation we can think of is that the public right-of-way typically extends beyond the edge of the pavement, and so sometimes a swath of land that abutting owners believe is all “theirs” is actually overlaid by a public right-of-way a developer or any other member of the public is allowed to traverse. But we were not there, and regardless of what happened, forward-looking there are no construction easements in place, and no activities allowed outside the plat itself and the surrounding public rights-of-way. The Applicant is aware that the neighbors here are vigilant, and any trespass is likely to draw a quick call to the Department.
13. The Applicant noted that it was obligated to make whole any damage to private property. To ensure this, we explicitly make this a condition of approval.

## Roads

14. Harvey is boarded by the urban collector arterial NE 175th Street to the north, the rural subcollector 164th Avenue NE to the east, and the rural sub-access NE 172nd Street to the south. All five homes will enter off NE 172nd Street.
15. NE 172nd Street currently has approximately 20 feet of pavement within a 30-foot right-of-way. The Applicant will dedicate additional right-of-way, and will expand and improve the north (plat) side of the street. As discussed at hearing, the Applicant will then overlay the entire NE 172nd Street. That is a Road Standards requirement, but we will lock this down by making it a condition of approval. So NE 172nd Street will, post construction, be better than the current NE 172nd Street.
16. The Applicant is not proposing to use or improve 161th Avenue NE, which dead ends into NE 172nd Street at the most southwesterly Harvey access point. However, the neighbors testified that heavy construction trucks repeatedly accessing Harvey's west edge have backed up onto 161th Avenue NE, damaging it, including "alligatoring" the pavement. The Applicant and Department's response was that the neighbors should call County Roads Services.
17. That is rich. We take judicial notice that the Roads Fund is underfunded to the tune of \$250 million each year, has been dwindling for years, with money for capital investments in unincorporated areas set to run out within the next few years and basic maintenance and operations services needing to be reduced.<sup>2</sup> Waiting on a severely under-resourced Road Services seems a little like planning retirement based on the hope a lottery ticket pans out. The cavalry is probably not coming.
18. The basic rule of land use is that while a developer cannot be forced to fix someone else's problem, the developer can be required to account for the direct results of its development. *Cf.* RCW 82.02.020. Thus, we add a requirement that once the dust settles on other construction, the Applicant must ensure that 161th Avenue NE in the vicinity of NE 172nd Street is restored and left in a condition equal to (or better than) its condition as of early 2019.
19. The Applicant will be improving and widening the west (plat) side of 164th Avenue NE, from NE 172nd Street up to the Southwest corner of the NE 175th Street intersection. NE 175th Street itself actually belongs to Woodinville. At five lots, Harvey's expected daily trip averages come nowhere close to triggering intersection improvement standards, even if NE 175th Street were a County road.
20. However, the neighbors explained how in icy conditions that intersection is notorious for accidents. Even if the intersection is Woodinville's, the Applicant has a duty not to exacerbate the problem. The neighbors' concern is that additional water runoff caused by Harvey will intensify slipping and sliding.

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<sup>2</sup> <https://www.seattleweekly.com/news/king-county-struggles-to-fund-roads-and-bridges/>.

21. Harvey’s topography is relatively level, with a general northeasterly slope. The far west lot (furthest from the intersection) drains in a different direction, but the bulk of Harvey drains northeasterly, towards the general vicinity of the intersection. The Applicant proposes to construct a combined detention/water quality pond near Harvey’s eastern edge.
22. By rule, an applicant must detain as much water as is necessary to match pre-development flows. And the most current version of the drainage manual pegs the baseline not to the property as it really is—here, with a not insignificant meadow—but as if it were currently all forest. This provides somewhat of a cushion. Matching the legal baseline should result in slightly less off-flows than the actual, pre-developed condition. As long as properly designed during the final engineering stage, the constructed Harvey should not exacerbate the 164th Avenue NE/NE 175th Street intersection’s problems.

### **Conclusions**

23. Except as modified above, we find correct and incorporate by reference the facts set forth in the Department’s testimony and preliminary report to the examiner. Ex. 2
24. Other than the items neighbors raised, Harvey is small and straightforward. As conditioned below, Harvey would conform to applicable land use requirements. In particular, the proposed type of development and overall density are specifically permitted in the RA-2.5 zone, given the Applicant’s TDR acquisition.
25. 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.
26. The conditions for final plat approval set forth below are reasonable requirements and in the public interest. We have only wordsmithed the bulk of conditions carried over from the Department’s preliminary report. Ex. 2. Condition 7 is our substantive addition.

### **DECISION:**

1. We approve the preliminary Harvey plat, subject to the following conditions.
2. Compliance with all platting provisions of KCC Title 19A.
3. 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.
4. The Applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the hydrant location and fire flow standards of KCC chapter 17.08.
5. LOTS:

- A. The plat shall comply with the density requirements of the RA-2.5 zone classification. All lots shall be the larger of the minimum dimensional requirements of the RA 2.5 zone classification or those shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the Permitting Division's discretion.
  - B. Any/all plat boundary discrepancies shall be resolved to the Permitting Division's satisfaction, prior to the submittal of engineering plans. 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. Note this may result in the reconfiguration and/or loss of lot(s).
  - C. The Applicant shall provide the TOR certificate with the submittal of the engineering plans and the final plat. If the TOR 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.
6. The Applicant must obtain final approval from the King County Health Department, prior to recording. Note, the existing well on Lot 1 shall be abandoned per DOE and King County Health.
  7. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
  8. All construction and upgrading of public and private roads shall be done in accordance with the 2016 King County Road Design and Construction Standards established and adopted by Ordinance No. 18420, as amended.
  9. The Applicant must obtain the approval of the King County Fire Protection Engineer 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 equipped with fire sprinkler per NFPA 130, unless the requirement is modified or removed by the King County Fire Marshal or designee. Notes to this affect shall be shown on the final plat.
  10. DRAINAGE:
    - A. Final plat approval shall require full compliance with the drainage provisions set forth in KCC chapter 9.04. Compliance may result in a reduction of the number and/or reconfiguration of lots shown on the approved preliminary plat.
    - B. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC chapter 9.04 and the 2016 King County Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- C. The drainage facilities and analysis shall meet the requirements of the 2016 SWDM. Permitting approval of the final drainage and roadway plans is required prior to any construction.
  - D. The site is subject to the Conservation Flow Control standard and Basic Water Quality Requirements of the 2016 SWDM.
  - E. For the individual subdivision lots included in the plat’s stormwater detention/water quality facility sizing, the amount of impervious and pervious areas accounted for each of the lots shall be noted on the final recorded plat drawings.
  - F. Implementation of flow control Best Management Practices (BMPs) shall meet the Small Subdivision Project Requirements per Section 1.2.9.3.1 of the SWDM. The final engineering plans and Technical Information Report (TIR) shall clearly demonstrate compliance with all applicable design standards.
  - G. Implementation of flow control BMPs required for/on the individual lots of the subdivision may be deferred until a permit is obtained for construction on each lot and is therefore optional. However, if a proposal wants to implement or make provision for implementing BMPs for the lot improvements as part of the subdivision project for purposes of receiving BMP modeling credits, the individual lot BMP requirements described in SWDM section 1.2.9.2 and the implementation requirements for subdivision projects described in SWDM section 1.2.9.4.1 must be met.
  - H. If the Flow Control BMPs are deferred until building permit review, the following note shall be shown on the final recorded short plat:
    - “Permit applications for buildings or other improvements constructed on lots created by this subdivision must be reviewed by King County for compliance with Flow Control Best Management Practices (BMPs) and other applicable drainage standards, as specified in the King County Surface Water Design Manual. As determined by King County, the permit applicant for each lot must prepare a drainage site plat with procedures for design and maintenance details and record a declaration of covenant and grant of easement for implementation of the Flow Control BMPs.”
- i. Standard plan notes and a construction sequence as specified in the SWDM shall be shown on the engineering plans (Reference Section 7-B).
  - ii. A Stormwater Pollution Prevention and Spill (SWPPS) plan, per Section 2.3.1.4 of the SWDM, shall be included with the project engineering plans.
  - iii. Any proposed clearing and grading of the site shall comply with the soil amendment requirements in KCC 16.82.100.



11. ROADS: The following road improvements are required to be constructed according to the 2016 King County Road Design and Construction Standards (KCRDCS):
  - A. NE 172nd Street shall be completed to a whole road section per Section 2.07 of the KCRDCS, and shall be improved at a minimum to the Rural Subaccess Standard per Table 2.02(B) of the KCRDCS. Pavement widening shall meet the overlay provisions of Section 4.03 of the KCRDCS.
  - B. An additional 18-feet of right-of-ways shall be dedicated along the north side of NE 172nd Street frontage.
  - C. 164th Avenue NE shall be improved at a minimum to the Rural Subcollector Standard per Table 2.02(B) of the KCRDCS.
  - D. Private access tract (Tract 998) and joint use driveway tract (JUD Tract 998) shall be improved per Sections 2.09 and Section 3.01 of the 2016 KCRDCS. Notes regarding ownership and maintenance of the tracts shall be shown on the engineering plans and final recorded plat.
  - E. There shall be no direct access to or from NE 175th Street along the north, which is classified as an urban collector arterial. Note(s) to this affect shall be shown on the engineering plans and final plat.
  - F. The frontage along NE 175th Street is located within the City of Woodinville. Right-of-way dedication, frontage improvements, if any, along the south side of NE 175th St shall be subject to the review and approval by the City of Woodinville prior to engineering plan approval.
  - G. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.12 of the KCRDCS.
12. Other Considerations:
  - A. The subdivision shall conform to KCC chapter 16.82 relating to grading on private property.
  - B. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.
  - C. Preliminary approval of this application does not limit the Applicant's responsibility to obtain any required permit or license from the State or other regulatory body. This may include, but is not limited to the following:
    - i. Forest Practice Permit from the Washington State Department of Natural Resources.

- ii. National Pollutant Discharge Elimination System (NPDES) Permit from WSDOE.
  - iii. Water Quality Modification Permit from WSDOE.
  - iv. Water Quality Certification (401) Permit from U.S. Army Corps of Engineers.
  - v. HPA from WSDFW.
13. Examiner-added conditions:
- A. In addition to widening NE 172nd Street, the Applicant must overlay the entire NE 172nd Street pavement-width (between 161st and 164th avenues)
  - B. The Applicant must ensure that 161st Avenue NE in the vicinity of NE 172nd Street is restored and left in a condition equal to (or better than) its condition as of early 2019.
  - C. The Applicant shall correct any damage to private property caused by plat construction.
  - D. We are not entirely sure of the mechanics of implementing this paragraph. Something like overlaying NE 172nd Street may be accomplishable before final plat approval. Something like restoring 161th Avenue NE would seem, by necessity, to post-date final plat approval and other construction. We leave to the Department's discretion how to achieve compliance with this paragraph.

DATED October 10, 2019.



David Spohr  
Hearing Examiner

### **NOTICE OF RIGHT TO APPEAL**

A person appeals this Examiner decision 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 *November 4, 2019*, an electronic copy of the appeal statement must be sent to [Clerk.Council@kingcounty.gov](mailto: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 *November 4, 2019*, the Examiner's decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *November 4, 2019*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

**MINUTES OF THE SEPTEMBER 26, 2019, HEARING ON PRELIMINARY PLAT APPLICATION HARVEY PLAT, DEPARTMENT OF LOCAL SERVICES FILE NO. PLAT180003, PROPOSED ORDINANCE NO. 2019-0357**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen, Thomas Colleron, Bryan de Boer, Brent and Linda Dippie, Ben Hughes, Peter Norris, Theresa Tollefson, Mike Walsh, and Graham Watson.

The following exhibits were offered and entered into the hearing record:

Exhibit no. 1	Department of Local Services file no. PLAT180003
Exhibit no. 2	Preliminary department report, transmitted to the Examiner on September 26, 2019
Exhibit no. 3	Land use permit application, submitted October 5, 2018
Exhibit no. 4	State Environmental Policy Act (SEPA) checklist, received October 5, 2018
Exhibit no. 5	SEPA determination of non-significance, issued July 30, 2019
Exhibit no. 6	<ul style="list-style-type: none"> <li>A. Affidavit of NOA-reissue, posted on December 6, 2018</li> <li>B. Affidavit of SEPA, posted on July 26, 2019</li> <li>C. Affidavit of NOH, posted August 20, 2019</li> </ul>
Exhibit no. 7	Plan set by Blueline, dated October 5, 2018
Exhibit no. 8	Assessors Map SE, dated November 26, 2005
Exhibit no. 9	Preliminary TIR by Blueline, received October 5, 2018
Exhibit no. 10	Critical Areas Designation (CADS180095)
Exhibit no. 11	Density Calculation worksheet, received October 5, 2019
Exhibit no. 12	TDR certificate, issued June 29, 2018
Exhibit no. 13	TDR/RA2.5 justification from Blueline, dated June 5, 2019
Exhibit no. 14	Northshore School District information, received November 2, 2018

DS/jo

October 10, 2019

**OFFICE OF THE HEARING EXAMINER  
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**CERTIFICATE OF SERVICE**

SUBJECT: Department of Local Services file no. **PLAT180003**  
Proposed ordinance no.: **2019-0357**

**HARVEY PLAT**  
Preliminary Plat Application

I, Jessica Oscoy, 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, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 10, 2019.



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Jessica Oscoy  
Legislative Secretary

**Bottheim, Steve**  
Department of Local Services

**Carlson, Joanne**  
Department of Local Services

**Claussen, Kimberly**  
Department of Local Services

**Colleron, Thomas**  
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**de Boer, Bryan**  
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**Dippie, Brent and Linda**  
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**Goll, Shirley**  
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**Helbock, Christine**

**Hughes, Ben**  
Department of Local Services

**Itkin, Amy**  
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**Killebrew, Chase**  
The Blueline Group  
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**Kirkpatrick, Bob**

**Nichols, Fritz and Kate**

**Norris, Peter**  
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**Suter, Sara**

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