

August 11, 2022

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

King County Courthouse
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www.kingcounty.gov/independent/hearing-examiner

ORDER DENYING SECOND MOTION FOR RECONSIDERATION

SUBJECT: Department of Local Services file no. **PLAT200004**
Proposed ordinance no.: **2022-0111**

WOODRUFF

Preliminary Plat Application

Location: [REDACTED] Renton

Applicant: Harbour Homes
represented by **Rachel Mazur and Milt Reimers**
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King County: Department of Local Services
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This preliminary plat hearing process has taken a very circuitous route. Typically, before a hearing we review all the exhibits (including public comments submitted to Local Services during application review), swear in witnesses and take testimony at the public hearing, ask all the questions we had prepared beforehand plus any prompted by testimony at the hearing, close the record after the hearing, and then write our decision.

At our April 21 hearing, we peppered Local Services and Harbour Homes witnesses with questions on several topics, let members of the public ask questions of Local Services and Harbour Homes, and took testimony from the public on a variety of issues. The Soos Creek Water and Sewer District's April 2020 certificate of availability for the Woodruff lots was entered as exhibit D20. No comments or questions at the hearing addressed water pressure/availability. We closed the record, unaware there had been earlier written public comments.

When we discovered, post-hearing, that there had been written public comments submitted during Local Services' application review, we were left with only sub-optimal choices for how to proceed. A main point of any hearing is to have everybody available in one forum, at one time, and to have a vigorous back-and-forth while all witnesses are sworn in, under oath, and available to be cross-examined. As that was not an option, we tried a two-fold work-around.

First, we admitted those earlier written public comments. Those comments addressed traffic, access, roads, easements, drainage, habitat, wetlands, property values, fencing, trees, and privacy. Ex. D21. Among the pre-existing public comments was one from Ms. Metz discussing plat access and traffic safety. Ex. D21 at 006-07. None of those comments mentioned water pressure/availability.

Second, we set a deadline for *additional* written public comments and a deadline for Harbour Homes and Local Services to submit responses to the pre-existing and forthcoming public comments.

We received four post-hearing comments. Exs. P1-P4. One was one from Mr. McCullough, discussing easements, tree removal, and surface water runoff. Ex. P2. And another was from Ms. Metz, reiterating her earlier comments about plat access and traffic safety, but then adding a paragraph about low water pressure in her development (the abutting Fairwood Pointe Harbour Homes plat), their efforts to get Harbour Homes to install booster pumps, and expressing concerns with water availability, given the added water draw from Woodruff. Ex. P4.

Local Services replied by the deadline, addressing the comments, many in substantive detail. However, on the water pressure topic, Local Services basically pointed to that April 2020 District certificate of availability for the Woodruff lots and the District's assurances. Ex. D22 at 004. Harbour Homes elected not to respond to any of the comments.

Based essentially on one paragraph in Ms. Metz's written comment—which was the only evidence in our record on water availability, other than the District's April 2020 certificate—in our May 27 decision we concluded that there was a demonstrated water pressure problem. We did not find the District's certificate sufficient, given that Fairwood Pointe could not have been approved without a similar certificate of water availability and the best evidence in our record (the only evidence in the record, amounting to that one paragraph) was that the District's earlier water availability certificate had proved insufficient for Fairwood Pointe, absent post-final plat approval intervention.

We concluded that Woodruff would make appropriate provisions, including for potable water supplies, but only with an added Condition 23 that:

Prior to final plat approval, the Applicant shall provide additional guarantees, beyond a mere Soos Creek Water and Sewer District certificate, to ensure that Woodruff and Fairwood Pointe homeowners actually have sufficient water pressure.

On June 21, Harbour Homes filed a motion for reconsideration, asserting that our added condition was vague and failed to establish an unambiguous standard for what additional guarantees were necessary. And Harbour Homes contended that it has already met the “additional guarantees” we required, attaching an updated, December 2021 District certificate. The December 2021 certificate showed more gallons per minute and a closer fire hydrant than the April 2020 Certificate had.

The following day we set yet another briefing schedule, soliciting responses on the water pressure issue from Local Services or any interested person, and allowing Harbour Homes a reply.

Mr. McCullough timely responded, stating that the critical inquiry is psi at the homes themselves, not at the hydrant, asserting that residential water pressure below 30 psi is too low, and requesting that Harbour Homes be prepared to install booster pumps in the surrounding plats. (Mr. McCullough does not live in a Harbour Homes development.) Neither Ms. Metz nor any other member of the public submitted anything.

Local Services did, explaining that water availability is subject to compliance with the District’s requirements, including the installation of an additional water main and subject to further reviews and approvals by the District and the King County Fire Marshal.

Woodruff replied that the District’s updated (December 2021) certificate of water availability satisfied and exceeded the requirements, and thus that Harbour Homes had already met our Condition 23. In the alternative, Harbour Homes offered an additional guarantee to install booster pumps for those homes in the Woodruff and Fairwood Pointe subdivisions experiencing water pressure less than 29 psi and who notify Harbour Homes within thirty (30) days of the last certificate of occupancy issued for a home in the Woodruff community.

In our August 5 Final Order, we found that Harbour Homes’ booster pump guarantee to its two subdivisions, Fairwood Pointe and Woodruff, was sufficient. We adopted the Harbour Homes-proposed condition that:

Harbour Homes will install booster pumps for those homes in the Woodruff and Fairwood Pointe subdivisions experiencing water pressure less than 29 psi and who notify Harbour Homes within thirty (30) days of the last certificate of occupancy issued for a home in the Woodruff community.

Ms. Metz has now filed a motion for reconsideration (attached). She asserts that the new condition is insufficient, because 30 days post-final certificate of occupancy may prove not enough time to determine the real impact of occupied homes on the water usage. Instead, she presses for 30 days past the sale of the last home in the community. And she requests a condition that would extend out even past any booster pump Harbour Homes might install.

We have moved far beyond the normal preliminary plat process. Based on a single paragraph in a single written comment submitted after the close of the public hearing (and thus not subject to cross-examination), in our plat approval we added an additional requirement on Harbour Homes. Harbour Homes responded not by playing hardball but by offering an additional guarantee beyond that we are aware of any past developer offering, one that extends beyond final plat recording.

That guarantee may not be a perfect solution, especially since water is ultimately supplied by a sewer and water district, and those districts are beyond the County's or a developer's control. The only substantive standard anyone has pointed to is WAC 246-290-420(2), which requires of public water system providers that "water pressure at the consumer's service meter, or property line if a meter is not used, shall be maintained at the approved design pressure, but in no case be less than 20 psi (140 kPa)." Harbour Homes offer extends to its houses experiencing water pressure less than 29 psi.

Our role on a *preliminary* plat application review—as opposed to later reviews before a *final* plat is approved and recorded, or to reviews that occur during the building permit approval process—is to determine whether "appropriate provisions" have been made for items such as "potable water supplies." RCW 58.17.110; KCC 20.22.180. We find that, with the amended Condition 23, Harbour Homes has carried its burden. We in no way minimize Ms. Metz's and Mr. McCullough's water-related concerns, but we have already stretched our authority to its limit.

We thus deny the latest motion for reconsideration. This will be our final order in this case; we will not be accepting any further motions. We will, however, extend the appeal deadline (below) one final time.

DATED August 11, 2022.



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 *September 5, 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 *September 5, 2022*, the Examiner’s decision becomes final.

If both a timely and sufficient appeal statement and filing fee are filed by *September 5, 2022*, the Examiner will notify all parties and interested persons and provide information about “next steps.”

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **PLAT200004**
Proposed ordinance no.: **2022-0111**

WOODRUFF

Preliminary Plat Application

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER DENYING SECOND MOTION FOR RECONSIDERATION** 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 August 11, 2022.



Jessica Oscoy
Office Manager

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Hardcopy

Casey, Laura

Claussen, Kimberly

Department of Local Services

Eichelsdoerfer, Robert

Department of Local Services

Gariepy, Daniel

Department of Local Services

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Harbour Homes

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Hunsaker, Don/Cailin

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Karen Orozco, Lisa Metz

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