

**CITY OF SHORELINE  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**APPEAL OF PRELIMINARY SHORT SUBDIVISION**

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**PROJECT INFORMATION SUMMARY**

**APPLICANT:** Chad and Joan Knox

**LOCATION:** 2103 Northwest 201<sup>st</sup> Street

**PROJECT NUMBER:** 201636

**SEPA THRESHOLD  
DETERMINATION:** Determination of Nonsignificance

**APPELLANTS:** Twentieth Avenue Neighbors

For purposes of this decision, all section numbers refer to the Shoreline Municipal Code (SMC or Code) unless otherwise indicated.

**BACKGROUND AND PROCEDURAL HISTORY**

Decision and Appeal

The City of Shoreline, Department of Planning and Development Services (Director or Department), issued a Notice of Decision on June 21, 2007, approving a preliminary short plat application. The Twentieth Avenue Neighbors filed a timely appeal of the decision. The Department then issued a Notice of Decision and SEPA Threshold Determination of Nonsignificance for the preliminary short plat on August 13, 2007. No further appeals were filed.

Hearing

A hearing was held on the appeal on August 29, 2007. The Appellants were represented by John Wolfe; the Department was represented by Ian R. Sievers, City Attorney; and the Applicant was represented by Diane L. Wies, attorney-at-law. The Hearing Examiner visited the site on the day of the hearing, and the record closed at the conclusion of the hearing.

The following witnesses offered testimony at the hearing:

For the Appellants: Jeff Johnson and John Wolfe

For the Department: Paul Cohen

For the Applicant: Chad Knox

After considering the evidence in the record and inspecting the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal:

### **FINDINGS OF FACT**

#### **Site and Vicinity**

1. The project site is addressed as 2103 NW 201<sup>st</sup> Street in the Richmond Beach neighborhood, and is located at the intersection of Northwest 201<sup>st</sup> Street and 21<sup>st</sup> Place N.W. Northwest 201<sup>st</sup> Street runs from southeast to northwest, but at the northeast corner of the site, it curves and continues directly west, while the street that continues on to the northwest becomes 21<sup>st</sup> Place N.W.
2. The site and surrounding area are zoned for single-family residential use, R-6, (six dwelling units per acre), with a minimum lot size of 7,200 square feet. The area is developed with single-family homes, and the older homes are generally smaller in size than those constructed more recently.
3. The site slopes down gently from east to west. It is developed with two residences and is accessed via a circular driveway off NW 201<sup>st</sup> Street, a residential street. The site includes no critical areas, but does include 14 trees classified as “significant” under the Code.

#### **Proposal**

4. The Applicant proposes to subdivide the 21,914 square-foot lot into three lots, each of which exceeds 7,200 square feet in size. The Applicant also proposes to import approximately 1000 cubic yards of soil for construction of street frontage improvements, a proposed access easement, utilities, and site preparation on the lots.
5. The lots will be served by a 20-foot-wide access easement along the west property line, across Lot 1. The easement narrows to 10 feet on Lots 2 and 3. The access drive will be located approximately 50 feet from the adjacent intersection, and the angle of the intersection will be reconstructed to 90 degrees for increased safety. Additional street improvements will also be required, including curb, sidewalk, and an ADA pedestrian ramp.
6. The project will require removal of at least six of the significant trees on the site. A total of 14 trees will be replanted.

7. Since the short plat will allow three single-family residences to replace the two existing residences, the project is expected to generate approximately 8 to 10 additional daily vehicle trips.
8. The proposed lot design provides sufficient space to meet the City's parking requirement of two spaces for each residential unit.
9. The Applicant submitted a Site Development Permit with the short plat application showing potential development for the lots created by the short plat.

#### Department's Review

10. The Director determined that the application was complete on April 30, 2007. The Director reviewed the application and SEPA submittals for the short subdivision, including a drainage assessment and a geotechnical engineering study. (Exhibit 11) Pursuant to SMC 20.30.540 (B)(4) and WAC 197-11-355 (4), the Department issued a combined Notice of Application on May 3, 2007, indicating that it was likely to issue a SEPA Determination of Nonsignificance (DNS) on the proposal.

11. On June 14, 2007, the Director issued a written report and decision approving the preliminary short plat with conditions. (Exhibit 13). The Director's report reviews the details of the site and project, the project's procedural history, the regulatory authority governing the project, environmental requirements under SEPA, the relationship of the project to the comprehensive plan as implemented by Title 20 SMC, the public comments on the proposal (including those from the Appellants) and Department responses, the applicable zoning, development and engineering standards, the adequacy of public facilities in the area, and appeal rights.

12. The Director's decision notes that preliminary short plat approval does not include approval of structures that may be constructed on the lots: "the actual structure setbacks, building height, building coverage, and impervious surface on each lot will be reviewed and approved at the time of submittal of the required construction permits on each lot." Exhibit 13 at page 7. The decision notes further that the Site Development Permit must be approved by the Shoreline Public Works Department before the final plat can be recorded. "Civil engineering plans and a technical information report for improvements required as a condition of preliminary approval of a subdivision shall be submitted to the Department for review and approval of the Site Development Permit." Exhibit 13 *supra*. See SMC 20.30.430 and .450.

13. The Director determined that the short plat application met all Code requirements for division of the site into three lots.

14. The Director imposed conditions on the preliminary short plat, including conditions requiring that the future development of each lot "meet the building setback, building coverage, impervious surface coverage, and building height requirements of the R-6 zoning regulations;" that an application for a Site Development Permit must be submitted

and approved prior to recording the final short plat; that “flow control and site drainage shall be prepared in accordance with the 1998 KCSWM [King County Storm and Surface Water Manual] as modified by the City of Shoreline;” that a “tree retention, removal, replacement and protection plan in conformance with SMC 20.50.350 -.370 shall be submitted and approved as part of the site development permit application;” and that plans submitted to the City “shall include ... provision of adequate sight distance at the proposed driveway in accordance with City standards,” and “a traffic control plan.” Noting that all project impacts would be mitigated by existing regulations, the Director did not impose SEPA-based conditions on the short plat.

15. As noted above, the Director issued a Notice of Decision on June 21, 2007. The Notice of Decision included a vicinity map and a site plan. The site plan appears to have been reduced in order to fit onto a half sheet of paper, which resulted in a distortion of the north/south property dimension relative to the east/west dimension.

16. Because the June 21, 2007 Notice did not include notice of the Director's SEPA determination, a Notice of Decision and SEPA Threshold Determination was issued on August 13, 2007.

### Appeal

17. The appeal states that the City failed to adhere to provisions of the Code and to disclose information to the surrounding property owners. The appeal includes five issues: 1) whether the graphics in the public notice of the proposed short plat were so misleading as to constitute an error of law; 2) whether the Director's decision is supported by substantial evidence with respect to the project's stormwater impacts; 3) whether the Director's decision concerning the private street is supported by substantial evidence; 4) whether the proposal meets the City's requirements concerning significant trees; and 5) with respect to the impact of the project on the character of the neighborhood, whether the Director failed to follow applicable procedures in reaching the decision, and whether it is supported by substantial evidence. At hearing, the Appellants also noted concerns about certain prehearing submittals.<sup>1</sup>

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<sup>1</sup> At the hearing, the Appellants stated that they were prevented from submitting their exhibits seven days prior to the hearing as provided in Rule 4.3 of the Shoreline Hearing Examiner Rules of Procedure, which states that such documents shall be provided to the Hearing Examiner and other parties one week prior to the hearing “whenever possible”. They also objected to the Applicant's submitting a legal memorandum to the Hearing Examiner one week before the hearing, which was continued to August 29, 2007. The Examiner has determined that her response at hearing was not completely accurate and will correct it here. Although Rule 4.3 provides that documents supporting a parties position are to be submitted one week in advance whenever possible, it is not unusual for the Examiner to receive exhibits that are bulky, such as the Appellants' exhibit boards, or lengthy, such as the Department's SEPA documents, for the first time at hearing. This does not result in prejudice, since there is ample time at the hearing and afterward for the Examiner to carefully review all exhibits. Rule 4.4 requires legal memoranda to be submitted to the Examiner at least one week in advance of hearing. The memoranda submitted in this case, which present the Applicant's and Department's legal argument, were timely under the Rule in light of the continued hearing date.

18. At hearing, the Appellants testified that a two lot short plat would be acceptable to them, but a three lot short plat is not. The Appellants also testified that they agree that the short plat meets "the numbers," i.e., the Code's development standards, but maintain that it is out of character with the neighborhood and does not meet what the Appellants regard as other applicable requirements.

19. The Appellants expressed concern about protection of downhill owners from the project's stormwater impacts and asserted that an EIS was required to assess the project's stormwater impacts. Although they conceded at hearing that the short plat meets requirements for a Level 2 detention facility, they believe the City should require detention facilities sized for a larger storm event. They also questioned whether the City will enforce its adopted requirements for stormwater detention.

20. The Appellants also expressed concern about the amount of traffic that may be generated by development of the short platted lots and whether the project will include sufficient access and parking.

#### Applicable Law

21. Criteria for preliminary subdivision review are found in SMC 20.30.410, and include the following:

- where "environmental resources exist, such as trees ... the proposal shall be designed to fully implement ... the tree conservation sections." SMC 20.30.410 (A)(1);
- "the proposal shall be designed to minimize off-site impacts, especially upon drainage and views." SMC 20.30.410 (A)(4);
- "lots shall be designed to contain a usable building area" SMC 20.30.410(B)(1);
- "each lot shall meet the applicable dimensional requirements of the Code" SMC 20.30.410(B)(3);
- "improvements shall comply with the development standards of SMC Chapter 20.60, Adequacy of Public Facilities." SMC 20.30.410(D)(2).

22. The City's "General Development Standards" are found in Chapter 20.50 SMC. Subchapter 1 includes "Dimensional and Density Standards for Residential Development," and includes SMC Table 20.50.020(1), which sets forth the dimensional standards for lots in the R-6 zone.

23. Subchapter 2 of the City's General Development Standards is entitled "Single-Family Detached Residential Design Standards". The "Purpose" of Subchapter 2 is stated in SMC 20.50.060 as "to establish design standards for single-family detached residential development as follows:

- A. To ensure that the physical characteristics of new houses through infill development are compatible with the character and scale of surrounding

- area, and provide adequate light, air, privacy, and open space for each house.
- B. To establish a well-defined single-family residential streetscape by setting back houses for a depth that allows for landscaped front yard.
- C. To reduce the visual impact of garages from the street views.
24. SMC 20.50.350(B)(1) provides that at least "20% of the significant trees on a given site shall be retained".

25. SEPA provides that if a city determines during environmental review of a project, that all probable, significant, adverse environmental impacts of the project will be adequately addressed and mitigated by adopted regulations, and conditions approval on compliance with those regulations, then the city need not also impose mitigating conditions pursuant to SEPA. RCW 43.21C.240.

### **CONCLUSIONS**

1. The preliminary short plat decision at issue in this case is a Type B action under SMC 20.30.050. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 20.30.200.
2. Under SMC 20.30.210, the grounds for an administrative appeal are limited to the following: (a) the Director exceeded his or her jurisdiction or authority; (b) the Director failed to follow applicable procedures in reaching the decision; (c) the Director committed an error of law; or (d) the findings, conclusions or decision prepared by the Director or review authority are not supported by substantial evidence.
3. The Appellant has "the burden of establishing that the decision being challenged is not supported by substantial evidence." Shoreline Hearing Examiner Rules of Procedure, Rule 5.7. "Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true." *Northlake Marine Works, Inc. v. Department of Natural Resources*, 134 Wn. App. 272, 293, 138 P.3d 626, 637 (2006).
4. The Appellants assert that the graphic in the public notice of short plat mislead them. However, they conceded at hearing that they had seen a properly proportioned site plan prior to filing their appeal. Further, it appears from the record that they had a "full map of the existing and proposed plat subdivision" to review as early as May of 2007 (Exhibit 13, Attachment 6). In any event, the Appellants have cited no authority for the proposition that the Department was required to include any graphic in the public notice, and presented no evidence that they were harmed in any way by the notice's reduced graphic. Although the graphic used in the notice included some distortion of property dimensions, nothing in this record demonstrates that its use constituted an error of law.

5. When questioned, the Appellants could cite no instances of the City's shirking its enforcement responsibilities for stormwater requirements. Nor did the Appellants cite any authority for the Director to impose stormwater detention requirements on this short plat in excess of those adopted by City ordinance. There is substantial evidence in this record to support the Director's decision on the stormwater impacts of the short plat and required mitigation. Further, the Director's determination not to require an EIS pursuant to SEPA for evaluation of stormwater impacts was not shown to be clearly erroneous. *See Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137 (2002).

6. The Appellants have stated concerns, but they have provided no evidence that the private access easement will be unsafe, or that vehicle trips or parking impacts from this short plat will exceed those calculated by the Director in accordance with City regulations. The Appellants have not met their burden of establishing that the Director's decision on these matters is not supported by substantial evidence.

7. The evidence indicates that the short plat will require removal of only six significant trees. City regulations would allow removal of up to 11 significant trees. Nothing in the record demonstrates that the Director's determination that the short plat complies with City regulations on tree retention constituted an error of law, or that it was not supported by substantial evidence.

8. The issue underlying this appeal is the Appellants' genuine concern with the character of recent development in their neighborhood. They dislike the "megahomes" they see being constructed and believe City regulations should prevent them. The Appellants cite SMC 20.50.060, the purpose section of the Code subchapter that includes design standards for single-family development, but this section simply states the legislative intent behind that the design standards included in that subchapter. It does not include regulatory language, and cannot be applied to contravene the specific regulatory standards adopted in this part of the Code. *See State v. Monroe*, 126 Wn. App. 435, 447, 109 P.3d 449 (2005). If there is a question about whether the design standards in subchapter 2 of Chapter 20.50 SMC effectively implement the intent stated in the subchapter's purpose section, it is properly directed to the City Council, rather than to the Hearing Examiner.

### **DECISION**

The Director's decision approving the preliminary short subdivision with conditions (Project 201636) is **AFFIRMED**.

Entered this 10th day of September, 2007.

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Sue A. Tanner  
Hearing Examiner

### **Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

SMC 20.30.250 provides that “Any judicial appeal shall be filed in accordance with State law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the City.”

### **Exhibits**

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| <b>Exhibit 1</b>  | Original Appeal Document and Receipt of Appeal Fee<br>Dated July 4, 2007                                 |
| <b>Exhibit 2</b>  | City of Shoreline List of Documents<br>Dated August 1, 2007  |
| <b>Exhibit 3</b>  | Order of Continuance<br>Dated August 9, 2007   |
| <b>Exhibit 4</b>  | Notice of Appearance<br>Dated August 15, 2007  |
| <b>Exhibit 5</b>  | Reply to Appeal from Applicant<br>Dated August 21, 2007  |
| <b>Exhibit 6</b>  | City of Shoreline Hearing Memorandum<br>Dated August 22, 2007  |
| <b>Exhibit 7</b>  | REVISED City of Shoreline List of Documents<br>Dated August 15, 2007                                     |
| <b>Exhibit 8</b>  | Letter to Chad Knox (Gilchrist Homes, Inc.) from Glen Pickus,<br>Planner II<br>Dated September 15, 2006  |
| <b>Exhibit 9</b>  | Letter to City of Shoreline, Planning Department from<br>Gilchrist Homes, Inc.<br>Dated October 23, 2006 |
| <b>Exhibit 10</b> | Permit Application for property located at 2103 NW 201 <sup>st</sup> Street<br>Dated April 16, 2006      |



- Exhibit 11** SEPA Environmental Checklist and Drainage Assessment  
Date stamped by Planning and Development Services on April 27,  
2007
- Exhibit 12** Notice of Short Plat Application including Optional SEPA DNS  
Process for the property located at 2103 NW 201<sup>st</sup> Street  
Dated May 3, 2007
- Exhibit 13** Preliminary Short Plat (Determination) SHSP 2007-6 for property  
located at 2103 NW 201<sup>st</sup> Street with 9 attachments  
Dated June 14, 2007
- Exhibit 14** Letter to Chad Knox, Gilchrist Homes, Inc. from Paul Cohen,  
Planner  
Dated June 15, 2007
- Exhibit 15** Notice of Decision  
Dated June 21, 2007
- Exhibit 16** CORRECTED Notice of Decision  
Dated April 13, 2007
- Exhibit 17** Summary of Notices (Appellant documented summary of  
procedures and notices of this hearing.)
- Exhibit 18** 36" X 24" page with various pictures and documentation
- Exhibit 19** 36" X 24" page with various pictures and documentation
- Exhibit 20** *Not admitted by the Hearing Examiner*
- Exhibit 21** Letter to Chad Knox, Gilchrist Homes, Inc. from Glen Pickus,  
former Planner II  
Dated September 8, 2006
- Exhibit 22** City of Shoreline Declaration of Covenant for Detention System  
Maintenance Form (with annotations from John Wolfe,  
Appellant)  
Undated