BEFORE THE HEARING EXAMINER
FOR THE CITY OF MILL CREEK

In the Matter of the Application of	)	No. CU 14-56
	)	
Katie Stecks, on behalf of	)	
Mill Creek EGUV, LLC	)	**Buffalo Park**
	)	
	)	FINDINGS, CONCLUSIONS,
For a Conditional Use Permit	)	AND DECISION

SUMMARY OF DECISION

The request for a Conditional Use Permit to construct a 1.26-acre public neighborhood park at 13401 44th Avenue SE is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on April 16, 2014.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Christi Amrine, City Senior Planner
Tom Rogers, City Community Development Director
Les Anderson, City Acting Director Public Works
Katie Stecks, Applicant Representative
Laura White, Neighboring Property Owner

Exhibits:
The following exhibits were admitted into the record:

1. Staff Report, with the following attachments:
   a. Vicinity Map & Legal Description
   b. Overall Site Plan for BS 12-63, revised May 8, 2013
   c. Adopted Park Master Plan, dated December 4, 2013
   d. Contents of Project File
2. Master Land Use Application, dated February 5, 2014
3. Project Narrative letter, received January 29, 2014
4. Letter of Completeness, dated February 6, 2014

5. Affidavit of Public Notification, dated February 10, 2014; Affidavit of Posting, dated February 11, 2014; Notice of Development Application, undated
6. Technical Review Committee Comment Letter, dated March 13, 2014, with attachments:
   a. Letter from Elisabeth Tobin, PUD, dated February 27, 2014
   b. Email from Les Anderson, Public Works Supervisor, dated March 6, 2014
7. Determination of Non-Significance for the Buffalo Park Conditional Use Permit, CU 14-56, issued March 14, 2014; Environmental Checklist, dated January 29, 2014, with agency notes; Affidavit of Public Notification, dated March 13, 2014; Affidavit of Posting, dated March 14, 2014
8. Affidavit of Public Notification, dated March 31, 2014; Affidavit of Posting, dated April 2, 2014; Affidavit of Public Notification, dated April 1, 2014; Notice of Public Hearing, undated
9. City Council Minutes of December 10, 2013
10. City PowerPoint presentation (19 slides)
11. City EGUV Neighborhood Park Planning Process, undated

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing.

FINDINGS

Application and Notice

1. Katie Stecks, on behalf of Mill Creek EGUV, LLC (Applicant), requests a Conditional Use Permit (CUP) to construct a 1.26-acre public neighborhood park at 13401 44th Avenue SE.[1] *Exhibit 1, Staff Report, page 1; Exhibit 2.*

2. The City of Mill Creek (City) determined the application was complete on February 6, 2014. The City posted notice of the application at City Hall on February 10, 2014; posted notice at the City Library and on the property on February 11, 2014. The City published notice in the *Everett Herald* on February 12, 2014. On April 1, 2014, the City posted notice of the open record hearing associated with the application at City Hall and City Library, and on the subject property on April 2, 2014. The City mailed notice to owners of property within 500 feet of the subject property on April 1, 2014, and published notice of the hearing in the *Everett Herald* on April 4, 2014. *Exhibit 1, Staff Report, page 2; Exhibit 5; Exhibit 8.*

State Environmental Policy Act

3. The City Department of Community Development acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA) in Chapter 43.21C RCW. The City reviewed the Applicant's environmental checklist and other information on file with the City, and determined that the proposed

[1] The property subject to the application is identified by Assessor's Tax Account number 28053300108400. *Exhibit 1, Staff Report, page 1.* A legal description of the subject property is provided in Exhibit 1.a.

project would not have a probable significant adverse impact on the environment. The City issued a Determination of Non-Significance (DNS) on March 14, 2014. The City emailed the DNS to the City's SEPA distribution email list, posted it at City Hall, and mailed to the City Library for posting, on March 13, 2014. The DNS was posted on the property on March 14, 2014. No appeal of the DNS was filed prior to the March 28, 2014, appeal deadline. *Exhibit 1, Staff Report, page 2; Exhibit 7.*

Comprehensive Plan, Zoning, and Surrounding Area

4. The property is designated Town/Village Center by the City Comprehensive Plan. The primary goals of the City Comprehensive Plan East Gateway Urban Village include encouraging density and a diverse mix of uses in the center, creating a strongly pedestrian-oriented and transit-friendly development, and creating strong identity for the East Gateway Urban Village. Relevant Comprehensive Plan Land Use Element policies include encouraging density and a diverse mix of uses in the center; creating places that provide for the needs of a diverse population of different ages; and reflecting an urban character with public places as focal points. Capital Facilities Element policies require, as a condition of development approval, that stormwater management facilities incorporate treatment consistent with the current Department of Ecology (DOE) Stormwater Manual. Utilities Element policies prohibit approval of urban development where services are not available, and require new utility facilities to be located underground where possible. Transportation Element policies require the design of sidewalks, trails, and other areas of public circulation to provide a high level of safety; the preservation of the Level of Service at or above established standards; and the connection of public sidewalks with trail systems where appropriate. Environmental Features Element policies include stormwater facilities that meet or exceed the requirements of the current DOE Stormwater Management Manual and that minimize erosion and sedimentation. Parks and Open Space Element policies include planning to join trails to the existing public/private trail system; retaining natural vegetation around park perimeters with vegetative buffers; considering long-term maintenance, operation, and renovation, or replacement costs, of park and recreation facilities; incorporation of adequate on-site and off-site parking for vehicles and bicycles; meeting the requirements of the Americans with Disabilities Act (ADA); and providing appropriate park signage.[2] *Exhibit 1, Staff Report, pages 1 and 8 to 14.*

5. The property is located within the City's East Gateway Urban Village (EGUV) zoning district. The purpose of the EGUV zoning district is to implement the planned urban village policies and EGUV Illustrative Development Plan contained in the City

[2] City staff identified Comprehensive Plan Land Use Element Policies 4.01, 4.02; Capital Facilities Element Policy 2.04; Utilities Element Policy 1.01 and 1.10; Transportation Element Policies 1.01, 2.02, and 4.01; Environmental Features Policies 1.02, 4.01, and 6.02; and Parks and Open Space Element Policies 1.02, 1.05, 2.01, 2.02, 2.03, 5.08, and 6.01 as applicable to the proposal. *Exhibit 1, Staff Report, pages 8 to 14.*

Comprehensive Plan. This district is intended to accommodate pedestrian-oriented mixed-use commercial, office, residential, and public uses that conform to the design and layout of an approved detailed master development plan and adopted design guidelines. *Mill Creek Municipal Code (MCMC) 17.19.010. Exhibit 1, Staff Report, page 1.*

6. Development is allowed within the EGUV zoning district following approval of a detailed master development plan, which may be for all or a portion of the site, and if the proposed development is substantially consistent with the EGUV Illustrative Development Plan. The master development plan includes a binding site plan and a development agreement between the owner and City setting forth conditions for development. *MCMC 17.19.020 through .030.* Open space, parks, and plazas are principal uses in the EGUV zoning district. *MCMC 17.19.030.N.* The City Council approved the Development Agreement for the Mill Creek EGUV, LLC (Polygon NW) (Ordinance No. 2013-758).[3] City Senior Planner Christi Amrine testified that the Development Agreement requires the EGUV developer to develop a City park in lieu of park fees. On July 9, 3013, the Hearing Examiner approved the East Gateway Binding Site Plan, BS 12-63, which constitutes the detailed Master Development Plan. The City adopted the Park Master Plan on December 10, 2013. Appropriate provisions for public improvements are required and are to be installed within a year of final development approval. The proposed project is one such public improvement. *MCMC 16.16.005 through .010. Exhibit 1, Staff Report, pages 14 to 16; Exhibit 1.b; Exhibit 1.c; Testimony of Ms. Amrine.*

7. Structures within the EGUV district must be less than four stories and must not exceed 50 feet in height. *MCMC 17.19.070.* The project design must comply with the approved detailed Master Development Plan and adopted design guidelines. *MCMC 17.19.050.* The proposed restroom/picnic shelter design would be subject to review and approval by the City's Design Review Board. *Exhibit 1, Staff Report, pages 16 and 17; Exhibit 1.c.*

8. The surrounding property is also zoned East Gateway Urban Village. The East Gateway Binding Site Plan allows the subdivision of three existing parcels and construction of a multi-family residential development, with 122 townhomes and 180 apartments and a commercial development. The proposed 1.26-acre public neighborhood park is part of this subdivision and is located northeast of the intersection of new subdivision streets 44th Avenue SE and 134th Street SE. *Exhibit 1, Staff Report, pages 15 and 16; Exhibit 1.b.*

Project Proposal

9. As depicted on the proposed Park Master Plan, the play equipment would occupy a centralized location around the proposed restroom/picnic shelter and two distinct lawn areas. A handball court and a four-square court would be constructed on the north side of the building. A bocce-ball court would be located in the southern portion of the site

[3] The Development Agreement (Ordinance 2013-758) is available on the City's website. *Testimony of Mr. Rogers.*

along with a seating wall. ADA accessible walkways are proposed around the perimeter and through the park. Park hours would be 8:00 AM to 10:00 PM. Security lighting would be provided for the restroom/picnic shelter and lighting under the picnic shelter. Landscaping, consisting of groundcover, trees, and shrubs, would be provided around the restroom/picnic shelter and along the eastern boundary to provide a buffer between the proposed park and townhouses. The eastern half of the proposed park is located above an underground stormwater detention vault constructed for the surrounding East Gateway subdivision. A landscape bed on the southern portion of the site would help screen stormwater detention vault vents. Parking would be available along 44th Avenue SE. A proposed condition requires converting one parking space to ADA standards. *Exhibit 1, Staff Report, pages 3 to 5; Exhibit 1.c.*

10. An Olympic Pipe Line Company (operated by BP pipelines) has a petroleum product pipeline easement along the east side of the East Gateway Urban Village over 300 feet from the east edge of the proposed park. Mr. Rogers testified that there is no need for additional conditions regarding the petroleum pipeline, as this was addressed as part of the Binding Site Plan approval. Pipeline signage is appropriate where there is pedestrian access to the pipeline easement. *Exhibit 1.b; Testimony of Mr. Rogers.*

Landscaping

11. The Applicant provided a conceptual park master plan. A proposed condition requires the Developer and the City to enter into an agreement for implementation of the approved landscape plan and enter into a secured performance bond, equal to 125 percent of the cost of labor and materials that would be posted prior to issuance of building permits in accordance with MCMC 16.16.040. Mr. Rogers testified that proposed Condition 2.B is needed to allow the City Design Review Board to review a detailed landscape plan for the proposed park. *Exhibit 1, Staff Report, page 18; Exhibit 1.c; Testimony of Mr. Rogers.*

Traffic Impacts

12. Transportation Engineering NW prepared a Traffic Assessment Report for the East Gateway Urban Village development as part of the Binding Site Plan application. The proposed park would generate a small percentage of the 2,831 net daily trips, which includes 164 AM peak hour trips and 235 PM peak hour trips projected for the surrounding East Gateway Urban Village development. *Exhibit 7.*

Stormwater Management

13. Core Design prepared a Storm Drainage Report for the Applicant, dated May 2013. *Exhibit 7.* The proposed park stormwater runoff was incorporated into the design and approval of the Binding Site Plan. A stormwater detention and water quality vault has been constructed in a drainage easement beneath the park, discharging to a wetland in the Bluegrass Meadows Plat to the west. The City approved the stormwater system, which was constructed consistent with City standards, the requirements of the February 2005

Department of Ecology Stormwater Management Manual for Western Washington, and Appendix 1 of the City's Phase 2 National Pollution Discharge Elimination System (NPDES) permit. *Exhibit 1, Staff Report, page 6; Exhibit 10.*

Utilities and Services

14. Silver Lake Water & Sewer District would provide water and sewer service to the proposed park. Snohomish County Public Utility District No. 1 would provide electric power. All new utilities would be placed underground, and easements or rights-of-way for all utilities and public improvements would be dedicated to the City or appropriate utility or agency. Snohomish County Fire Protection District No. 7 would provide fire protection services to the proposed park. *Exhibit 1, Staff Report, pages 5, 6, and 18.*

Public Comments

15. Laura White testified that she lives to the west of the proposed park and asked about drainage. Ms. Amrine testified that the proposed park would have less impervious surface than the prior farm use, which included greenhouses, and that past drainage problems have been corrected. Les Anderson, City Acting Director Public Works, testified that two large drainage vaults would hold water and slowly release it to an adjoining wetland at a controlled rate. *Testimony of Ms. White, Ms. Amrine, and Mr. Anderson.*

Staff Recommendation and Applicant Response

16. Mr. Rogers testified that the Development Agreement requires the proposed park to be completed by December 31, 2014. City staff reviewed the application and determined that the proposed use would comply with Comprehensive Plan goals and policies, and meets the provisions of chapter MCMC 17.28 and other applicable sections of the development code including setbacks.[4] Katie Stecks, Applicant Representative and Development Coordinator for Polygon NW and EGUV, LLC, testified that the Applicant agrees with all proposed conditions. She noted that the name "Buffalo Park" was chosen because there was a buffalo [bison] farm on the site at one time. *Exhibit 1, Staff Report, pages 7 to 16; Testimony of Mr. Rogers; Testimony of Ms. Stecks.*

CONCLUSIONS

Jurisdiction

The City of Mill Creek Hearing Examiner is authorized to hear and decide conditional use permit applications for City parks.[5] *Chapter 4.34 Mill Creek Municipal Code (MCMC); MCMC 14.03.080.A.6.*

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[4] The City's Technical Review Committee met on March 5, 2014, reviewed the CUP application, and determined that no issues or requests for additional information were raised. *Exhibit 6.*

[5] MCMC 17.19.020 provides: "All development and uses shall thereafter occur in accordance with the approved detailed master development plan." Mr. Rogers testified that the master plan review does not have a formal hearing review. He testified that the City intends to update current language in the Comprehensive Plan (Policy 5.08), which directs the Planning Commission to hold a public hearing on the

Criteria for Review

No application for a conditional use may be approved unless all of the following criteria are satisfied[6]:

A. The proposed use is harmonious and appropriate in design, character and appearance with the existing or intended character or quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property.

B. The proposed use will be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities and storm drainage facilities.

C. The proposed use will not be materially detrimental to uses or property in the immediate vicinity of the subject property, and will not materially disturb persons in the use and enjoyment of their property.

D. The proposed use will not be materially detrimental to the public health, safety and welfare.

E. The proposed use is in accord with the comprehensive plan.

F. The proposed use complies with this chapter and all other provisions of this code.

MCMC 17.28.060.

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **With conditions, the proposed use would be harmonious and appropriate in design, character, and appearance with the existing or intended character or quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property.** The restroom/picnic shelter building design, landscaping, and signage location would be reviewed and approved by the City's Design Review Board. Park hours would be consistent with City park policies. Minimum lighting would be provided as necessary for safety and security. The perimeter of the proposed park would be landscaped with trees, which would provide a buffer from the townhomes to be located to the south, across 44th Avenue SE, and to the east. The

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CUP with a recommendation to the City Council, to be consistent with the MCMC *14.03.080.A.6,* authorizing the Hearing Examiner to conduct the open record hearing for a CUP. The City determined that the CUP process was appropriate to provide additional public review. *Exhibit 11; Testimony of Mr. Rogers.*

[6] MCMC 14.01.030 provides: "Conditional use" means certain uses in the city which, because of their potential impacts, unusual size, infrequent occurrence, possible safety hazards, or detrimental effects on surrounding properties, may be suitable only under specified conditions, in specific locations, or in certain zoning districts.

proposed park is part of an approved Binding Site Plan for the surrounding East Gateway development and has been integrated into the development design. Conditions are necessary to ensure that the Developer submit building design specifications and landscaping plans to the City Design Review Board for review and approval, place all new utilities underground, and enter into an agreement with the City for landscaping plan implementation with a secured performance bond. *Findings 1, 3, 6-16.*

2. **The proposed use would be served by adequate public facilities including roads, water, fire protection, sewage disposal facilities, and storm drainage facilities.** The proposed park is part of an approved Binding Site Plan for the surrounding East Gateway development and has been integrated into the development design. New city streets, with parking, are to be constructed along the north and southwest park boundaries. Utilities and services for the proposed park are available with water and sewer connections provided by the Silver Lake Water & Sewer District. The Snohomish County Fire Protection District No. 7 would provide fire response. Stormwater treatment would be provided by an already constructed stormwater detention and treatment vault under the proposed park. *Findings 1, 12-14.*

3. **With conditions, the proposed use would not be materially detrimental to uses or property in the immediate vicinity of the subject property, and would not materially disturb persons in the use and enjoyment of their property.** The proposed park is part of an approved Binding Site Plan for the surrounding East Gateway development and has been integrated into the development design. Minimum lighting would be provided as necessary for safety and security. The perimeter of the proposed park would be landscaped with trees, which would provide a buffer from the townhomes to be located to the south, across 44th Avenue SE, and to the east. Parking would be provided along 44th Avenue SE. Conditions are necessary to ensure that the Developer submit building design specifications and landscaping plans to the City Design Review Board for review and approval, place all new utilities underground, enter into an agreement with the City for landscaping plan implementation with a secured performance bond, limit construction activity to 7:00 AM to 9:00 PM Mondays through Fridays and 8:00 AM to 9:00 PM on weekends, and convert a public parking space on 44th Avenue SE to be ADA compliant. *Findings 1, 3, 6-16.*

4. **With conditions, the proposed use would not be materially detrimental to the public health, safety, and welfare.** The proposed park would provide open space, a children's play area, a bocce-ball court, and handball court. The park would be an asset to the community. The proposed park is located over 300 feet from an Olympic Pipe Line Company easement. Minimum lighting would be provided as necessary for safety and security. Conditions are necessary to ensure that the Developer submit building design specifications and landscaping plans to the City Design Review Board for review and approval, place all new utilities underground, enter into an agreement with the City for

landscaping plan implementation with a secured performance bond, and convert a public parking space on 44th Avenue SE to be ADA compliant. *Findings 1, 3, 6-16.*

5. **With conditions, the proposed use would be in accord with the Comprehensive Plan.** The City adopted a Park Master Plan for the proposed use consistent with Comprehensive Plan Policy 5.08. The proposed ADA Accessible walkways in the park would connect to the existing sidewalks in the area consistent with Policy 1.02. Vegetative buffers are included consistent with Policy 1.03. Parking would be provided along 44th Avenue SE and appropriate signage would be provided. Conditions are necessary to ensure that the Developer install a standard City park sign and convert a public parking space on 44th Avenue SE to be ADA compliant. *Findings 1, 4-14, and 16.*

6. **With conditions, the proposed use complies with this chapter and all other provisions of this code.** The City provided adequate notice of the application and opportunity to comment. The Applicant prepared an Environmental Checklist and the City issued a Determination of Non-Significance. The Binding Site Plan for the East Gateway development includes a stormwater vault for collecting and managing stormwater runoff from the proposed park, as well as new city streets to provide access, as well as on-street parking. Conditions are necessary to ensure that the Developer submit building design specifications and landscaping plans to the City Design Review Board for review and approval, place all new utilities underground, enter into an agreement with the City for landscaping plan implementation with a secured performance bond, limit construction activity to 7:00 AM to 9:00 PM Mondays through Fridays and 8:00 AM to 9:00 PM on weekends, and convert a public parking space on 44th Avenue SE to be ADA compliant. *Findings 1-3, 5-16.*

DECISION

Based upon the preceding Findings and Conclusions, the Hearing Examiner **APPROVES** a request for a Conditional Use Permit to construct a 1.26-acre public neighborhood park at 13401 44th Avenue SE, subject to the following conditions:[7]

1. Development shall be generally consistent with the Adopted Park Master Plan (Exhibit 1.c) as determined by the Director of Community Development.

2. The restroom/picnic shelter building design, materials, composition, colors; and landscaping and signage location shall be reviewed and approved by the City of Mill Creek Design Review Board and shall include the following:

   A. Building design specifications for the restroom/shelter building shall include:

[7] This decision includes conditions required to reduce project impacts as well as conditions required to meet Municipal Code standards.

1) City Design Specification as cited in the email from Les Anderson, Public Works Supervisor, dated March 6, 2014 (which is attached to the TRC Comments letter in the project file).
2) Adequate lighting and security building lighting will be provided on the exterior of the restroom/picnic shelter building as well as under the picnic shelter pursuant to the Illuminating Engineering Society of North America. Building lighting shall be installed on a timer. The lighting plan is required to be reviewed and approved by the Design Review Board, MCMC 17.34.030.
3) A Frontier phone line to the mechanical room for irrigation telemetry.

B. The landscape plan shall include the following:
1) An irrigation plan showing a separate meter for the park.
2) A mutt mitt station shall be shown on the plan with a garbage can by the station. Appropriate/potential locations include: 1) along the north side of the park near the entry by the restroom/shelter building, or 2) at the entry at the 44th Avenue SE and 134th Street SE intersection.
3) Garbage cans shall be installed in the park at locations approved by the City.
4) A concrete curb is required around the bocce ball court for long-term use and low maintenance. Plans for the bocce ball court will be reviewed by the Public Works Department in conjunction with the Civil Plan approval.
5) The play surface around the play equipment shall be wood carpet (play chips).
6) The large rocks shown shall be a minimum of a two man rock and are required to be setback a minimum of two feet from walkways or roadways.
7) In order to adequately screen the vents and provide seating by the bocce ball court as described in the park master plan, a bench with a back shall be installed on top of the 18-inch seating wall.

3. The Developer shall install a standard City park sign, pursuant to City specifications and visibility requirements. Location is subject to review and approval by the Design Review Board.

4. All new utilities within the project shall be placed underground in accordance with Municipal Code. Appropriate easements and/or right-of-way for all utilities and public improvements shall be dedicated to the City or appropriate utility/agency as necessary.

5. Prior to the commencement of any site work, grading, stormwater, erosion control and site improvement plans shall be approved by the Directors of Public Works and Community Development.

6. Dust and erosion shall be controlled by promptly covering exposed stockpiles, watering areas of soil disturbance, and using a street sweeper on adjacent roads.

7. The Developer and the City shall enter into an agreement for implementation of the approved landscape plan and enter into a secured performance bond equal to 125 percent of the cost of labor and materials, in accordance with MCMC Section 16.16.040, posted prior to issuance of building permits.

8. Once the Developer has fulfilled the obligations of the landscape performance bond, the Applicant shall enter into a two-year maintenance agreement for the approved and installed landscaping in accordance with MCMC Section 16.16.090.

9. All public park improvement work shall be adequately guaranteed through an agreement and security mechanism acceptable to the Public Works Director prior to beginning construction in accordance with MCMC Chapters 16.16 and 16.20.

10. Construction activity will be limited to Monday through Friday, 7:00 AM to 9:00 PM, with weekend hours 8:00 AM to 9:00 PM.

11. The Developer shall convert one parallel public parking space on 44th Avenue SE to an accessible parking stall in accordance with 2011 Public Right-of-Way Accessibility Guidelines.

12. The Developer shall be responsible for all associated costs and fees, as well as obtaining the required permits and agreements, necessary to provide on-site utilities, including communications and water and sewer improvements.

13. The Developer shall install City approved signage that includes the park operating conditions as stated in chapter 12.12 MCMC.

Decided this 24th day of April 2014.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center