

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MILL CREEK**

In the Matter of the Application of)	No. PP 14-66
)	
Site Development Associates, LLC,)	
on behalf of Crest Vue Village 24, LLC)	Crestview Village
)	
For a Preliminary Plat and a)	FINDINGS, CONCLUSIONS,
<u>Planned Area Development</u>)	AND DECISION

SUMMARY OF DECISION

The Hearing Examiner **APPROVES** a Preliminary Plat and **APPROVES** a Planned Area Development to subdivide 3.29 acres into 25 lots for single-family homes located at 2226 and 2304 132nd Street SE. Conditions are necessary to mitigate impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 25, 2014.

Testimony:

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

Camille Chriest, City Senior Planner
Scott Smith, City Engineer
Tom Rogers, City DCD Director
Andy Reaves, P.E., Project Engineer
Glen Vedera
Jason Shaw
Court Sheehan
Kevin O'Brien

Attorney Patrick Mullaney represented the Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with attachments:
 - a. Vicinity Map
 - b. Preliminary Plat Map, revised July 30, 2014
 - c. Legal Description
 - d. Contents of Project File
2. Master Land Use Application, received July 7, 2014.
3. Owner's Letter of Authorization, signed March 31, 2014

*Findings, Conclusions, and Decision
City of Mill Creek Hearing Examiner
Crestview Village, No. PP 14-66*

4. SDA Crestview Village Narrative Statement letter to City of Mill Creek, dated March 13, 2014
5. Chicago Title Insurance Company Subdivision Guarantees/Certificate Number 500012106, received April 3, 2014
6. Letter from Richard G. Gilmore, P.E., Silver Lake Water & Sewer District to Camille Chriest, dated March 27, 2014
7. Landscape Plan (Sheet La-1), dated March 15, 2014
8. SDA Revised Project Narrative letter to City of Mill Creek, dated June 30, 2014
9. Determination of Complete Application, dated April 15, 2014
10. Notice of Development Application, undated; Affidavit of Public Notification, dated April 16, 2014; Affidavit of Posting, dated April 18, 2014
11. Letter from Camille Chriest to Andy Reaves, dated May 15, 2014, Technical Review Committee review comments, with attachments:
 - a. Memo from Camille Chriest to Scott Smith, dated May 13, 2014
 - b. Email from Scott Rodman to Camille Chriest, dated May 6, 2014, with email string
 - c. Snohomish County PUD letter to Camille Chriest, dated May 9, 2014
 - d. Email from Maria Dobson-Schmidt to Sherrie Ringstad, dated May 2, 2014, with attached Traffic Mitigation Offer to Snohomish County
 - e. Letter from Captain Evan Adolf, Snohomish County Fire District No. 7 to Camille Chriest, dated May 7, 2014
 - f. Letter from Chuck Booth, Everett Public Schools, to Camille Chriest, dated May 6, 2014
 - g. Email from David Collins to Camille Chriest, dated May 8, 2014, with email string
 - h. Preliminary Development Impact Mitigation Checklist, undated
12. Memorandum from Jeff Schramm, Transportation Engineering Northwest Traffic, to Scott Smith, response to WSDOT Comments, dated June 27, 2014
13. Technical Memorandum from Jeff Schramm, Transportation Engineering Northwest, to Scott Smith, Crestview Village Traffic Assessment, dated March 26, 2014
14. Traffic Mitigation Offer to Snohomish County and Snohomish County Traffic Worksheet, received July 2, 2014
15. Record of Developer Obligations for Mitigation of Impacts to Snohomish County Road System, dated July 2, 2014
16. SDA Crestview Village Technical Information Report, dated June 30, 2014
17. SDA Preliminary Drainage Plan set, revised June 30, 2014:
 - a. Title Sheet (Sheet C1.0)
 - b. Existing Conditions (Sheet C2.0)
 - c. TESC and Grading Plan (Sheet C3.0)
 - d. Drainage and Utility Plan (Sheet C4.0)
 - e. Road Profiles (Sheet C5.0)
18. Mitigated Determination of Non-Significance and Notice of Property Development Impact Mitigation for the Preliminary Plat/Planned Area Development of Crestview Village (City File PP 14-66), dated July 22, 2014, with attached SEPA checklist and City staff notes, prepared March 13, 2014

19. Affidavit of Public Notification, dated September 6, 2014; Affidavit of Posting, dated September 5, 2014
20. City staff PowerPoint Presentation (21 slides)
21. Silver Lake Water District and Catherine Revell revocable license, filed August 16, 2006

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. Site Development Associates, LLC (SDA), on behalf of Crest Vue Village 24, LLC (Applicant),¹ requests approval of a Preliminary Plat (PP) and a Planned Area Development (PAD), with setback modifications, to subdivide 3.29 acres into 25 lots for single-family homes located at 2226 and 2304 132nd Street SE.² *Exhibit 1, Staff Report, page 1; Exhibit 1.b; Exhibit 2; Exhibit 17.*
2. The City of Mill Creek (City) determined the application was complete on April 15, 2014. A Notice of Development Application (NDA) for the project was posted at City Hall on April 16, 2014, and posted at the City Library on April 17, 2014. An NDA was posted on the site and published in *The Herald* on April 18, 2014. A Public Hearing Notice (PHN) was posted at City Hall on August 28, 2014, on the site on September 5, 2014, and at the City Library on September 6, 2014. The PHN was mailed to property owners within 500 feet of the proposed project on September 5, 2014. City Senior Planner Camille Chriest testified that reasonable notice was provided. *Exhibit 1, Staff Report, page 2; Exhibit 9; Exhibit 10; Exhibit 19; Testimony of Ms. Chriest.*

State Environmental Policy Act (SEPA) Review

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), Chapter 43.21C RCW. The City reviewed the Applicant's Environmental Checklist and information on file and determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment. Tom Rogers, City SEPA Responsible Office, issued a Mitigated Determination of Non-Significance (MDNS) on July 22, 2014, with a comment and appeal deadline of August 6, 2014. Ms. Chriest testified that no MDNS appeal was filed. The MDNS conditions are included as

¹ The property is owned by the Harry and Catharine Revell Living Trust. The owners authorized Site Development Associates, LLC, to act as agent in seeking project approvals. *Exhibit 2.* The City staff report identifies Crest Vue Village 24, LLC, as the applicant. *Exhibit 1, Staff Report, page 1.* The signed Traffic Mitigation Offer to Snohomish County, dated June 30, 2014, lists Crest Vue Village 24, LLC as the Applicant. *Exhibit 14.*

² The property subject to the application is identified by Assessor's Parcel Numbers 28053200201400 and 28053200200900. *Exhibit 18.* A legal description of the subject property is provided in Exhibit 4.

preliminary plat/planned area develop conditions. *Exhibit 1, Staff Report, pages 2 and 21 to 25; Exhibit 18; Testimony of Ms. Christ.*

Comprehensive Plan and Zoning

4. The property is designated Medium Density Residential (MDR) by the City Comprehensive Plan. Comprehensive Plan policies are relevant to the proposal. Land Use Element policies establish the city's residential character as a composition of a range of residential densities, with a predominance of single-family communities, requiring compatibility with surrounding land uses and structures within and adjacent to the development, and appropriately-sized property buffers surrounding the peripheries of residential developments to provide and identifiable neighborhood character. Applicable Capital Facilities Element policies require stormwater management facilities that incorporate treatment components. Utilities Element policies mandate that urban development be approved only where services are available and, where possible, all new facilities are located underground. Transportation Element policies establish that projects shall not be approved if they reduce the level of service below established standards, that access points shall be designed and located to minimize traffic flow disruptions, that projects provide for internal circulation, and that public sidewalks be connected with other public/private trail systems where appropriate. Environmental Features Element policies encourage the use of low impact development (LID) techniques to minimize impervious surfaces, require the inclusion of stormwater facilities that meet or exceed current Department of Ecology Stormwater Management Manual requirements, and encourage landscaping with the use of native plant materials and the preservation of wooded areas.³ *Exhibit 1, Staff Report, pages 1 and 10 to 14.*

5. The property is located in the Medium Density Residential (MDR) zoning district. There is no minimum lot size in the MDR zone. The number of dwelling units permitted in a planned residential development shall not exceed the density of the comprehensive plan land use designation and the zone district in which the project is located. *Mill Creek Municipal Code (MCMC 16.12.050)*. The maximum allowable density in the MDR zoning district is 12 dwelling units per acre and the minimum density is five dwelling units per acre under Mill Creek Municipal Code (MCMC) 17.12.070. City staff calculated the proposed 25 dwelling units would result in a density of 10 dwelling units per acre. The MDR zoning district requires front yard setbacks of 15 to 20 feet, with garages constructed a minimum of 20 feet from sidewalks; side yard setbacks that total 10 feet; and rear yard setbacks of a minimum of 25 feet from the perimeter of the project and 15 feet for structures not located on the perimeter. *MCMC 17.12.080.A. Exhibit 1, Staff Report, pages 4, 5, and 15; Exhibit 1.b.*

³ City staff identified the following Comprehensive Plan policies as relevant to the proposal: Land Use Element Policies 1.01, 1.04, 1.11, 1.12, and 1.13; Capital Facilities Element Policy 2.04; Utilities Element Policies 1.01 and 1.10; Transportation Element Policies 2.02, 3.03, 3.04, 3.06, and 4.01; and Environmental Element Policies 1.01, 1.02, 4.01, and 5.01. *Exhibit 1, Staff Report, pages 10 to 14.*

Physical Condition and Surrounding Property

6. The property is 3.29 acres and contains two existing single-family houses and various outbuildings. All structures would be removed prior to construction. A majority of the site contains pastured grassland, with some tree clusters, with a slope from two to eight percent. There are no environmentally sensitive areas on the site. *Exhibit 1, Staff Report, pages 2 and 11; Exhibit 1.b; Exhibit 16; Exhibit 18.*
7. An existing 50 square foot encroachment area on the property to the west is described in a Revocable License agreement between Silver Lake Water District and Catherine Revell, Auditor's File Number 2000608160875. Patrick Mullaney, Applicant Representative, argued that the encroachment is a license that terminates when the property is sold under Sec. 3.1.b of the agreement. He requested that proposed Condition 4, requiring the encroachment to be legally abandoned prior to final plat approval, be deleted. *Exhibit 1, Staff Report, pages 7 and 22; Exhibit 5; Exhibit 21; Statement of Mr. Mullaney.*
8. The property is bounded by 132nd Street SE on the north. Properties to the north, across 132nd Street SE, are in unincorporated Snohomish County, and include a single-family residence zoned Multiple Residential (MR) and an undeveloped parcel zoned Low Density Multiple Residential. Property to the west is zoned Community Business (CB) and is developed with a Silver Lake Water and Sewer District water tank, and a vacant district office and outbuildings. Property to the south is zoned Low Density Residential (LDR) and developed with single-family residences in the Wexford Court development. Property to the east is zoned MDR and developed with single-family residences. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 1.b.*

Landscaping and Open Space

9. City code requires on-site open space and recreational facilities in an amount adequate to meet the recreational, health, environmental, and safety needs of the residents, occupants, guests, and visitors of the development. The amount of open space should be proportional to the density of the development, and should meet the purpose and intent of the zone district. The open-space areas should be readily accessible to all residential units. These areas should be appropriately screened and proportioned, and should not have more than five percent grade. *MCMC 17.22.060.* The proposal provides open space in Tracts 998 and 999. The proposal includes a 50-foot landscaped residential roadway buffer along 132nd Street SE. The Applicant would provide 5,270 square feet of private open space, plus 9,325 square feet in the roadway buffer. Tracts 998 and 999 would be landscaped and would include an underground wet vault. The proposal provides benches and a picnic table in Tract 998 because the development is a single-family project that is located more than one-quarter mile from a public park. Street trees would be provided along the public street. The proposed landscaping of the common areas, roadway buffer, and street trees would be reviewed and approved by the City Design Review Board. *Exhibit 1, Staff Report, pages 6, 14, 17, and 22; Exhibit 1.b; Exhibit 7.*

Access and Traffic Impacts

10. Access to the site would be via an internal public street from 132nd Street SE (SR 96), a class 3 highway. The internal street, with sidewalks on both sides, would extend south and terminate in a temporary cul-de-sac that would provide access to future development to the east. The internal public street, including a southwest spur, would provide access to Lots 1-25. *Exhibit 1, Staff Report, page 6; Exhibit 1.b; Exhibit 12; Exhibit 13*
11. Transportation Engineering NorthWest (TENW) submitted a Crestview Village Traffic Assessment, dated March 26, 2014, and a Response to Washington State Department of Transportation (WSDOT) Comments, dated June 27, 2014. The proposed residential development would generate 219 new weekday daily trips, of which 17 would be weekday AM peak hour, and 23 weekday PM peak hour trips. The City and Snohomish County (County) have a Reciprocal Impact Mitigation Agreement for development impacts on interjurisdictional transportation systems and the requirement to mitigate appropriate impacts in accordance with adopted road improvement programs. Following this agreement, the project is required to comply with specific measures identified by the County that are reasonably necessary to mitigate the development's impacts on directly affected county roads in the surrounding area. Snohomish County Code (SCC) 30.66B.330 provides for the payment of traffic impact fees prior to final plat approval. Separate City transportation mitigation impact fees would also be paid to the City prior to approval of the final plat. *Exhibit 1, Staff Report, pages 9 and 24; Exhibit 1.b; Exhibit 12; Exhibit 13.*
12. WSDOT comments requested a queue analysis for SR-96 at the 21st Avenue SE and 25th Avenue SE intersections, including development of the parcel to the east; elimination of the left-turn lane on SR-96; development of a new local road parallel to SR-96 to connect to 21st Avenue SE or 25th Avenue SE; and extension of the existing traffic curbing from 21st Avenue SE eastward along SR-96 to prevent left turn access to and from the site. TENW responded that the adjacent parcel to the east is not owned by the developer; that a queue analysis did not disclose any adverse impacts to these intersections; that elimination of the center two-way left-turn lane would impact numerous other properties along SR-96; that the City does not have capital project plans to develop a new road parallel to SR-96; and that the queue analysis does not support the need to extend a curb on SR-96 further east from the 21st Drive SE intersection. Frontage improvements along 132nd Street SE are required as provided by MCMC 16.16.050, including removal of existing driveway cuts, and construction of a new single access point with concrete curb, gutter, and sidewalk. *Exhibit 1, Staff Report, page 7; Exhibit 12.*
13. The preliminary plat has been designed with connecting walkways to the adjacent neighborhoods for access to the site and through the site, including access to potential development of the property to the east. The planned walkways are to be constructed in compliance with the American with Disabilities Act (ADA). *Exhibit 1, Staff Report, pages 13 and 20; Exhibit 1.b.*

14. MCMC 17.27.020 (Off-street parking and requirements) requires single-family dwellings to have two parking spaces per dwelling unit. This proposal provides parking throughout the site in garages, driveways, and on the public road where feasible. The project provides four off-street parking per residential unit: two parking spaces in the garage and two in the driveway. *Exhibit 1, Staff Report, page 6; Exhibit 1.b.*
15. Mr. Mullaney commented on the references in proposed Conditions 13 and 20 to a Development Agreement with WSDOT for work within the State right-of-way. He asked that a different term be used to describe this agreement since the words “Development Agreement” is a document described under the Growth Management Act, RCW 36.70A as an agreement with a developer. City Engineer Scott Smith testified that WSDOT refers to their right-of-way permit as a “development agreement,” and it is required for such work. The City agreed that these conditions could reference permit approval rather than a development agreement. *Statement of Mr. Mullaney; Testimony of Mr. Smith.*

Stormwater Management

16. The site lies within a single drainage basin with no upstream drainage to the site. Stormwater currently drains overland from the southwest toward the north before crossing the property boundary and entering the 132nd Street SE right-of-way. Stormwater would be captured and conveyed to a proposed underground wet vault in the northwest corner of the project site within Tracts 998 and 999. The wet vault would provide both flow control and water quality treatment, and would connect to an existing public drainage system on 132nd Street SE. The developed runoff rate would be less than existing flow. The Applicant submitted a Technical Information Report (TIR) prepared by SDA for the proposed development, dated June 30, 2014. The TIR identified a weakly cemented hardpan on site at a depth of 20 to 40 inches. Permeability is moderately rapid above the hardpan and very slow through it. The new drainage system planned for the development would meet City standards and the new requirements of the February 2005 Department of Ecology Stormwater Management Manual for Western Washington with Appendix 1 of the City’s Phase 2 NPDES permit (dated effective September 1, 2012). The TIR also includes a Construction Stormwater Pollution Prevention Plan (CSWPPP) and a Temporary Erosion and Sediment Control (TESC) Plan. Privately owned common areas and facilities would be maintained by the homeowners’ association (HOA) for the new development. *Exhibit 1, Staff Report, pages 7 and 22; Exhibit 16; Exhibit 17.d.*

Utilities and Services

17. Utilities and services are available for the development. The site has adjacent water and sewer facilities that can be extended through the Silver Lake Water and Sewer District Developer Extension Process to provide for on-site needs. Silver Lake Water and Sewer District (District) provided the City with a Water and Sewer Availability Letter, dated March 27, 2014. *Exhibit 1, Staff Report, page 6; Exhibit 1.b; Exhibit 6.*

18. Snohomish County PUD No. 1 would provide electrical service to the development. The PUD has reviewed the application and indicated that, although there is capacity to serve the proposed development, upgrading of existing District facilities may be required. Frontier Communications or Comcast would provide telephone communication services. Puget Sound Energy would provide natural gas service. *Exhibit 1, Staff Report, page 7; Exhibit 11.c.*
19. The City and County Fire District No. 7 have executed an Interlocal Agreement for mitigation of development impacts on fire facilities and services. Captain Evan Adolf of Fire District No. 7 reviewed the project and requested several plat improvements, which have been included in the recommended conditions for the project. The developer is also required to pay mitigation fees for development impacts prior to approval of the final plat. *Exhibit 1, Staff Report, pages 9, 24, and 25; Exhibit 11.e.*
20. This proposal would increase the demand for the City's park and recreation facilities through the addition of 25 single-family residential units. Fees are required to mitigate the project's impacts on neighborhood and community park and recreation facilities. Mitigation fees to offset impacts are calculated in accordance with City Resolution 2011-477. *Exhibit 1, Staff Report, pages 8 and 24.*
21. The Everett School District reviewed the proposal. The City and the Everett School District have executed an Interlocal Agreement for mitigation of development impacts on district facilities. Mitigation fees are calculated per the Interlocal Agreement. The proposed development would be serviced by Mill Creek Elementary School, Heatherwood Middle School, and H.M. Jackson High School. According to the Everett School District, the elementary and high schools are over capacity, and require mitigation. The Applicant has signed a voluntary mitigation agreement to pay mitigation fees totaling \$53,751.00 for the development impacts. In addition, the Everett School District has determined that students would be picked up and dropped off at the entrance along 132nd Street SE. The District has requested one hard-surfaced, student waiting area be located at the entrance. The hard-surfaced waiting area would be approximately 10 feet by 15 feet, located behind the sidewalk. The waiting area would be connected to the housing units in the development with safe student walkways. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 1.b; Exhibit 11.f.*

Planned Area Development

22. MCMC 16.12.010 defines a planned area development as an alternate form of development regulation that allows for a more flexible method of developing land. The Applicant requests reductions of the rear yard setbacks to 10 feet for Lots 1-11 and 17-25, and 20 feet for Lots 12-16. City staff determined that the proposed setbacks are necessary to allow the development at the required minimum density and are compatible with the required setbacks in adjacent neighborhoods. City staff determined that the proposed setback modifications would allow more flexibility in the design of the homes

and would not alter the 40 percent maximum lot coverage standard. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 1.b*

Public Comment, and City and Applicant Response

23. Glen Vedera, a resident in the Wexford Court development to the south, testified about the requested rear yard setback reduction from 25 feet to 20 feet. He requested that no modification be approved. Jason Shaw also testified and opposition to the proposed setback reduction. Court Sheehan testified that the proposed subdivision would be much denser than the Wexford Court development. He also expressed concerns about stormwater detention. Mr. Reaves, Project Manager, testified about the TIR (Exhibit 16) and explained the stormwater design was necessary because of a lack of controlled infiltration. Mr. Mullaney noted that the proposal provides landscaping along the south property line. Kevin O'Brien, a partner in the future ownership of the property, testified that the setback reduction is needed to accommodate standard house footprints and that a 20-foot rear yard setback is the same as the 20-foot setback in Wexford Court. He agreed to add a condition requiring the installation of a six-foot cedar suburban fence, as well as two, two-inch caliper evergreen trees per lot along Lots 12-16. Tom Rogers, City DCD Director, testified that the City code allows flexibility in setbacks to allow a high-quality house to be built and to accommodate an increased number of residences. *Testimonies of Mr. Vedera, Mr. Shaw, Mr. Sheehan, Mr. Reaves, Mr. O'Brien, and Mr. Rogers; Statement of Mr. Mullaney.*

Staff Recommendation

24. City staff reviewed the proposal for consistency with the Land Use Map, the applicable policies of the Comprehensive Plan, and the City's development regulations. City staff recommended approval, with conditions, of the Preliminary Plat and Planned Area Development, including the setback modifications. *Exhibit 1, Staff Report, pages 21 to 25.*

CONCLUSIONS

Jurisdiction

The City of Mill Creek Hearing Examiner is authorized to hear and decide preliminary plat applications and development permits, including planned area development applications. The Hearing Examiner may grant, deny, modify, or grant with conditions, modifications, or restrictions. *Chapter 4.34 Mill Creek Municipal Code (MCMC); MCMC 14.03.080.A-C.*

Criteria for Review

The application shall be compatible with the City code, Comprehensive Plan, and other regulations, laws, policies, goals, and objectives of the City and shall be compatible with applicable state laws and regulations. *Mill Creek Municipal Code (MCMC) 14.03.080.C.*

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.*

Preliminary Plat

MCMC 16.04.020.A and MCMC 16.04.020.B set forth information and submittal requirements, surveys, studies, and other elements required for preliminary plat review.

In addition, RCW 58.17.110(1) provides that a proposed subdivision shall not be approved unless:

appropriate provisions are made for . . . the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and . . . all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and . . . the public interest will be served by the platting of such subdivision and dedication.

Planned Area Development

MCMC 16.12.010 defines a planned area development as an alternate form of development regulation that allows for a more flexible method of developing land. Binding site plans are not required for planned residential developments approved in conjunction with a preliminary plat.

MCMC 16.12.020 describes the purposes for planned area development, including:

- A. To allow for creative development equal to or superior to traditional lot-by-lot development.
- B. To preserve open space, natural vegetation, watercourses, wetlands, historic buildings and places, and other community values.
- C. To provide more efficient street and utility systems and retain existing vegetation by clustering buildings.
- D. To provide for a variety of housing types in one development with architectural design compatibility.
- E. To provide integrated landscape development.
- F. To provide for the integration of new development into the existing community while protecting and preserving the values of the surrounding neighborhood.
- G. To provide for the site planning and regulation of nonresidential sites not requiring a subdivision for development.
- H. To manage stormwater through a land development strategy that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic conditions.
- I. To minimize impervious surfaces and effective impervious surfaces.
- J. To encourage infiltration as a preferred method of stormwater drainage, when feasible.

- K. To encourage development of residential environments that is harmonious with on-site and off-site natural and built environments.
- L. To further the goals and the implementation of the policies of the comprehensive land use plan. (Ord. 2009-702 § 2 (Exh. C))

MCMC 16.12.040 permits modification to all zoning and subdivision requirements in a planned area development in the interest of the expressed purposes above, except:

- A. Permitted uses;
- B. Street setbacks on exterior streets in residential zones;
- C. Surveying standards;
- D. Engineering design and construction standards of public improvements but not including street right-of-way width; and
- E. Roadway buffer/cutting preserves consistent with the streetscape element of the comprehensive plan. (Ord. 2009-702 § 2 (Exh. C))

The number of dwelling units permitted in a planned residential development shall not exceed the density of the comprehensive plan land use designation and the zone district in which the project is located. *MCMC 16.12.050*. Under MCMC 16.12.060, in planned residential developments, open space and community recreation facilities shall be provided pursuant to MCMC 17.22.060. Upon approval of the Hearing Examiner, unbuildable land may be considered for inclusion in the required open-space land upon a showing that such lands can and will be used for specified recreational or community purposes.

MCMC 16.12.090 - 140 set forth requirements for planned area developments for project descriptions; owners' association documents; separate approvals for phased development, if applicable; other certificates and approvals; recordings; and time limits.

The criteria for review adopted by the Mill Creek 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 preliminary plat would be consistent with the City code, Comprehensive Plan, and other City policies, goals, and objectives.** The proposed subdivision is consistent with City Comprehensive Land Use Plan goals and policies because it would convert two single-family homes on 3.29 acres into a subdivision of 25 single-family homes. The proposed subdivision would have a density consistent with the City's MDR zoning criteria. The proposal includes open space and proposed landscaping as required by the City's development regulations. Sewer, water, telephone, gas, and power services are available to the site. One access point is proposed for the site from 132nd Street SE via a public street running south and then curving to the east to a temporary turn-a-round that could be extended east should subdivision

development take place on the adjacent property. Sidewalks are proposed to connect to existing sidewalks where possible. Safe student walkways from housing units to a hard-surfaced, bus waiting area would be built. The project incorporates stormwater management facilities, including an underground wet vault, which would comply with the Department of Ecology Stormwater Manual for Western Washington and City requirements. The proposal provides sufficient open space to meet MCMC requirements. A Planned Area Development is part of this application in order to obtain modifications in rear yard setback requirements. Conditions are necessary to ensure that the Applicant establishes an HOA to maintain common areas and stormwater facilities; follows landscaping and buffer requirements; builds the sidewalks and waiting-area pad to allow for safe walking conditions for students; constructs the required stormwater system; and pays mitigation fees for traffic, parks, fire district, and school impacts, and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1, 4 – 24.*

2. **With conditions, the proposed preliminary plat would make appropriate provision for all elements identified within RCW 58.17.110, and would serve the public use and interest.** The City provided adequate notice and opportunity to comment on the proposal. Proposed development density is consistent with density allowed within the City's MDR zoning district. Public services, including water, sewer, and fire protection, are available. Open space and landscaping would be provided within the proposed development. The City determined that, with conditions, the proposal would not have a probable significant adverse impact on the environment. MDNS conditions include payment of traffic, parks, fire district, and school impact fees. Sidewalks are planned within the subdivision to connect to existing sidewalks where possible. Safe student walkways from housing units to a hard-surfaced, bus waiting area would be built. A public street would be constructed to serve subdivision lots. Stormwater facilities are proposed, including an underground wet vault for water quality and flow control. A Planned Area Development is part of this application in order to obtain modifications in rear yard setback requirements. Conditions are necessary to ensure that the Applicant follows the modified setback requirements; establishes an HOA to maintain common areas and stormwater facilities; follows landscaping and buffer requirements; builds the sidewalks and waiting-area pad to allow for safe walking conditions for students; constructs the required stormwater system; pays mitigation fees for traffic, parks, fire district, and school impacts, and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1 – 24.*
3. **With conditions, the preliminary plat application would comply with MCMC 16.04.020 submittal requirements.** The City determined that the preliminary plat application was complete on April 15, 2014. A condition is necessary to ensure development as depicted on the preliminary permit. *Findings 1, 2, 24.*

4. **With conditions, the planned area development would comply with the requirements set forth in Chapter 16.12 MCMC.** The Applicant submitted a Planned Area Development application in order to obtain modifications in rear yard setback requirements from a minimum 25 feet from the perimeter of the project and 15 feet for structures not on the project perimeter. The proposed reductions would be to 10 feet for Lots 1-11 and 17-25, and 20 feet for Lots 12-16. The proposed setback reduction is compatible with adjacent single-family developments. The proposed setback reduction helps meet the density targets established in the Comprehensive Plan. The modifications allow for flexibility in the designs of homes to be constructed in the development. The modifications do not reduce the 40 percent maximum lot coverage standard. Conditions are necessary to ensure that the Applicant follows setback requirements, to provide a six-foot cedar suburban fence along the property line of Lots 12-16 and add two, two-inch caliper evergreen trees per lot to provide additional buffer from the residential development to the south, and to ensure that the project proceeds in conformance with the plans on file and with applicable City code, policies, goals, and objectives. *Findings 1, 3, 6-9, 22, 23.*

DECISION

Based upon the preceding Findings and Conclusions, the requests for a Preliminary Plat and Planned Area Development, with setback modifications, to subdivide 3.29 acres into 25 lots for single-family homes located at 2226 and 2304 132nd Street SE, is **APPROVED**, subject to the following conditions:⁴

1. Development shall occur as portrayed on the Preliminary Plat Map, except as may be modified by the Hearing Examiner following the open record hearing, per MCMC Chapter 4.34.
2. Building setbacks on the lots shall be as follows:

Front yard setbacks:
 - Average range 15 feet to 20 feet; garages shall be constructed a minimum of 20 feet from the back of sidewalk.Rear yard setbacks:
 - 10 feet for Lots 1-11 and 17-25;
 - 20 feet for Lots 12-16Side yard setbacks:
 - Total of 10 feet; the entire setback may be allocated to one side.

⁴ This decision includes conditions required to reduce project impacts as well as conditions required to meet City code standards.

3. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together with attendant restrictions and conditions, shall be portrayed on the final plat. Building setback lines shall be shown on the face of the final plat.
4. (deleted by agreement at hearing)
5. In accordance with MCMC Section 16.04.100, the Preliminary Plat approval shall expire and become void if the final plat is not submitted for approval in accordance with the time frames set forth in RCW 58.17.140.
6. The subdivision shall be incorporated into a homeowners' association that would be responsible for the maintenance of all privately owned common areas and facilities. Homeowners' association documents in accordance with MCMC Section 16.12.100 shall be submitted with the final plat application and recorded at the time of final plat recording.
7. The developer may assign its rights and obligations under this development approval upon prior written notice to the City identifying the new entity and evidencing the transfer of obligations to the new entity.
8. Landscaping plans for Tracts 998 and 999 and the street trees shall be submitted to the Design Review Board for review and approval in accordance with Chapters 4.18 and 17.34 MCMC. All landscaped areas shall be amended with a minimum thickness of four inches of compost mixed to a minimum depth of six inches.
9. 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 the issuance of the first building permit.
10. 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.
11. Grading, roadway, stormwater, and erosion control plans shall be approved by the City Engineer and Community Development Director prior to any clearing or grading work on the site, Chapter 15.12 MCMC.
12. All public improvement work shall be adequately guaranteed through an agreement and security mechanism acceptable to the City Attorney and City Engineer prior to beginning construction in accordance with Chapters 16.16 and 16.20 MCMC.
13. In accordance with Chapter 16.16 MCMC, the developer shall construct improvements

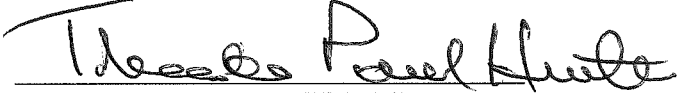
along the frontage on 132nd Street SE (SR 96). The required frontage improvements shall consist of: (i) Removal of existing driveways; (ii) Replacement of concrete curb, gutter and sidewalk as needed; (iii) Construction of a new single access point as portrayed on the Preliminary Plat; (iv) Permit approval by WSDOT may be required for any work within the State Right-of-Way, and the developer shall be responsible for all associated permitting and inspection costs with WSDOT.

14. The developer shall construct a new public roadway within the development for access to the proposed lots. The roadway shall be designed to accommodate future development on the adjacent parcels with a loop roadway system and a single shared access point on 132nd Street SE. These public improvements shall consist of: (i) Full width of the street and sidewalk cross section with functional elements in accordance with Resolution 2003-338, including vertical concrete curb and gutter, a five-foot wide concrete sidewalk and five-foot wide planter strip; (ii) Street lighting; (iv) Stormwater and drainage facilities; (v) Street trees and landscaping; (vi) Striping and signage; (vii) a temporary cul-de-sac at the southern terminus; (viii) Dedication of public right-of-way and drainage easements as needed to the City of Mill Creek on the final plat.
15. The developer shall submit engineering design plans and documentation to address all required public and private drainage improvements. The approved stormwater system shall include the following elements and conditions per Chapter 15.14 MCMC:
 - A. Stormwater facilities that meet the requirements of the City of Mill Creek, the February 2005 edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, and Appendix 1 of the City's Phase 2 NPDES Permit (dated as effective September 1, 2012).
 - B. A final stormwater drainage report signed and stamped by a licensed professional engineer shall be submitted to the City Engineer for review and approval.
 - C. The property owners shall be obligated to own, maintain and operate the stormwater system outside the public right-of-way to the satisfaction of the City Engineer.
 - D. Provisions shall be included with the final plat for maintenance of the stormwater system outside the public right-of-way, including, but not limited to, adequate access to maintenance locations, provisions and easements that allow the City to inspect and maintain the system at its discretion, and adequate provisions to ensure uninterrupted function of the facilities for the proposed development.

16. Dust and erosion shall be controlled by promptly covering exposed stockpiles, watering areas of soil disturbance, using a street sweeper on adjacent roads, and other Best Management Practices as directed by the City Engineer, Chapter 15.12 MCMC.
17. All new and existing utilities within the project shall be placed underground in accordance with MCMC Section 17.22.110. The Applicant shall be responsible for all costs associated with undergrounding the utilities. Appropriate easements or right-of-way for all utilities shall be provided by the Applicant and shown on the face of the final plat.
18. The developer shall install a mailbox structure and covered stand for the proposed development in accordance with City standards. The location of the mailboxes shall be approved in writing by both the City and Post Office prior to installation.
19. The developer shall pay mitigation to the City of Mill Creek in the amount of \$69,000.00 for impacts to the City roadway system. Payment of traffic mitigation fees to the City of Mill Creek is required prior to approval of the final plat.
20. As part of the WSDOT permit process, operational restrictions may be placed on the SR 96 access point in accordance with City Comprehensive Plan polices and WSDOT design requirements.
21. In accordance with the Reciprocal Impact Mitigation Agreement between the City of Mill Creek and Snohomish County, proof of payment of traffic mitigation fees totaling \$35,259.00 shall be provided to the City prior to approval of the final plat.
22. Pursuant to Chapter 17.48 MCMC, the developer shall pay neighborhood park mitigation fees to the City of Mill Creek in the amount of \$65,866.48 prior to approval of the final plat.
23. Pursuant to Chapter 17.48 MCMC, the developer shall pay community park mitigation fees to the City of Mill Creek in the amount of \$39,989.64 prior to approval of the final plat.
24. In accordance with the Interlocal Agreement between the City of Mill Creek and Snohomish County Fire District No. 7, proof of payment of mitigation fees totaling \$8,395.00 shall be provided to the City prior to approval of the final plat.

25. In accordance with the Interlocal Agreement between the City of Mill Creek and the Everett School District, proof of payment of mitigation fees totaling \$53,751.00 shall be provided to the City prior to issuance of the first building permit.
26. The developer shall provide one hard-surfaced, student waiting area located within the 132nd Street SE roadway buffer. The hard-surfaced waiting area should be approximately 10 feet x 15 feet in size, linked to the housing units in the development with safe student walkways, and located behind the sidewalk.
27. The developer shall ensure adequate fire flow/hydrants and 4" STORTZ adaptors on all hydrants.
28. The developer shall ensure floor plans that allow for secondary egress (windows) from rooms on either the front or rear of the structure.
29. The developer shall ensure parking is only allowed on one side of the road and is clearly marked with signage.
30. Parking shall be prohibited on the corners. Curbs shall be clearly marked and "No Parking" signage shall be installed prior to final plat approval.
31. The developer shall install a six-foot high cedar suburban fence, and plant two, two-inch caliper evergreen trees per lot along Lots 12-16.

Decided this 7th day of October 2014.


THEODORE PAUL HUNTER
City of Mill Creek Hearing Examiner
Sound Law Center

This decision is final and effective as of the date of this decision. The Applicant, a Party of Record, and/or the City of Mill Creek may appeal this decision only as specifically allowed for in the applicable sections of the Mill Creek Municipal Code (MCMC), including but not limited to Chapter 14.11 MCMC.