

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE**

In the Matter of the Application of )

**DAVID SHIH** )  
**(KIMBERLEE PARK III)** )

**FILE NOS: 08-135645-LK**  
**11-103630-LO**

For Approval of a Planned Unit )  
Development and Preliminary )  
Conservation Subdivision, in the )  
Newport Hills Subarea )

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW**  
**AND DECISION**

In the Matter of the Appeal of )

**ROGER CHIOU** )

**FILE NO: AAD 11-67**

From a Determination of Non-Significance )  
(DNS) in relation to the Kimberlee Park III )  
Project. )

**SUMMARY**

**1. Decision:** The appeal is **GRANTED**. The Planned Unit Development permit and preliminary plat are **DENIED**.

**2. Proposal:** The applicant seeks to divide a 7.47 acre parcel, zoned R-3.5, into 17 buildable lots, two private road tracts, one drainage tract and four Native Growth Protection Area (NGPA) Tracts. Proposed lots sizes range from 5,043 square feet to 9,844 square feet. The proposed plat is located within the Critical Areas Overlay District (streams and steep slopes). A Critical Areas Land Use Permit was approved administratively.

The site is a roughly "L-shaped" parcel lying between I-405 to the west and Lake Washington Boulevard SE to the east, in the Newport Hills Subarea. The overall topography slopes steeply from east to west. In the middle of the parcel, there are also steep slopes forming the sides of a significant ravine running east to west dividing the northerly from the southerly

7/28/2011

1 portions of the property. The site contains 3.99 acres of critical area, leaving 3.48 buildable  
2 acres.

3 Under the Planned Unit Development (PUD), detached single-family houses would be  
4 constructed on opposite sides of the ravine: Lots 1 through 5 on the south and Lots 6 through 17  
5 on the north. Access to the houses on the south would be via a steep private drive off of SE 60th  
6 Street. The houses on the north would be accessed via a private extension of 110th Avenue SE.  
7 There would be no direct road connection between the homes on the north and those on the  
8 south, eliminating the need for a bridge between the housing areas. The center of the site would  
9 be retained as an NGPA tract.

10 The use of the PUD mechanism would allow narrower lot widths and smaller lot sizes  
11 than the zoning standards. The proposed homes in Kimberlee Park III would be three-story  
12 structures built into the hillsides, on lots averaging 6, 449 square feet. No density bonus would  
13 be needed.

14 To the north and northeast of the site are Kimberlee Park II and II, established one-or-  
15 two-story single-family developments, platted in the 1960's, on lots between 9,542 and 24,590  
16 square feet. To the south of the site are large residences on lots, exceeding 35,000 square feet.

17 **3. Procedure:** The application was filed on November 21, 2008. Notice of Application  
18 was made on January 8, 2009. Publication, posting and mailing were accomplished as required.  
19 A public meeting was held on January 14, 2009. Comments were accepted by the Development  
20 Services Department (DSD) through the date of the Staff Report, May 12, 2011.

21 Numerous comments were received from residents of the existing Kimberlee Park  
22 developments and from residents of property to the south of the proposal's site. They focused  
23 principally on the compatibility of the proposed housing with neighboring housing, the effect  
24 of the new homes on traffic conditions, and stormwater management. The Staff Report contains  
25 responses to the individual questions raised.

26 Environmental review was conducted pursuant to the State Environmental Policy Act  
27 (SEPA). The City concluded that existing City codes and requirements are adequate to mitigate  
28 potential environmental impacts and issued a Determination of Non-Significance (DNS) on May  
29 12, 2011. The DNS was appealed by Roger Chiou on May 25, 2011.  
30

7/28/2011

1 The Staff Report contains an administrative decision approving the Critical Areas Land  
2 Use approval. This decision was not appealed.

3 The combined Hearing Examiner hearing of the underlying applications and the SEPA  
4 appeal was scheduled for June 16, 2011. Two days prior to the hearing, Counsel for Appellant  
5 Chiou requested a continuance on grounds of failure to receive notice. The Examiner scheduled  
6 the hearing to take place over a period of two weeks, mooting the issue of notice issue for the  
7 PUD and plat hearing. He denied a request to extend the date for filing an appeal of the Critical  
8 Areas Land Use Approval.

9 The Hearing Examiner hearing commenced as scheduled on June 16, 2011, in Bellevue  
10 City Hall. Appellant was represented by Darrell Mitsunaga, Attorney at Law. David Bricklin,  
11 Attorney at Law, represented the Kimberlee Park Community Club (KPCC). The applicant was  
12 represented by Mark Plog, Consulting Engineer. Catherine A. Drews, Attorney at Law,  
13 represented Bellevue's DSD. Reilly Pittman, Associate Land Use Planner for DSD, presented  
14 the City's Staff Report. The hearing was completed in subsequent hearing sessions held on June  
15 23, 29 and 30, 2011.

16 At the hearing, public testimony was heard from 19 members of the public. Ed  
17 McCarthy, a professional engineer and hydrologist, testified as an expert for the citizens. In  
18 addition presentations were made by Attorneys Mitsunaga and Bricklin. Testifying for the City  
19 were Reilly Pittman, Ray Gordinez, Transportation Department, Arturo Chi, Utilities  
20 Department, and Michael Paine, DSD. Testifying for the applicant were Mark Plog, Project  
21 Engineer, and Bryan Palidar, Architect.

22 The City's files on this matter were admitted as well as six numbered City exhibits. For  
23 the underlying permit hearing, thirty-five exhibits were submitted and admitted on behalf of  
24 members of the public. One exhibit was admitted on behalf of the applicant.

25 In the SEPA appeal case, as a result of agreements made during the hearing process,  
26 issues regarding noise, road improvements, and visual impacts were withdrawn. Questions  
27 relating to the adequacy of drainage plans, project feasibility, and fire access were retained. The  
28 appellant argued for revision of the DNS to a Mitigated Determination of Non-Significance  
29 (MDNS) by the addition of conditions. Thirteen exhibits were admitted in appellant's SEPA  
30 Appeal case.

7/28/2011

1 Following the public hearing, the Examiner left the record open until July 8, 2011, for  
2 additional submissions by the public (Robert Friel) and the City. Friel's statement and two  
3 additional submissions by the City were timely filed and given exhibit numbers. The record  
4 closed on July 8, 2011.

## 6 FINDINGS OF FACT

### 7 General

8 1. The factual matters set forth in the foregoing **SUMMARY** are adopted by the  
9 Examiner as findings.

10 2. The proposal for a Planned Unit Development and Conservation Subdivision is called  
11 Kimberlee Park III. It is situated on a single 7.47 acre parcel which is addressed as 11050 SE  
12 60th Street, lies within the Newport Hills subarea, and is zoned R-3.5. It is roughly in the shape  
13 of an "L", rather like a ski-boot.

14 3. The parcel slopes down steeply to the west toward the I-405 freeway. The site  
15 directly abuts the freeway along the western property line. The interior (eastern) boundary of the  
16 property does not abut a street. It is bordered, in part, by developed residential lots of the  
17 existing Kimberlee Park development which were platted in the 1960s. Because of the  
18 topography these lots are located above the project site. To the east of these residential lots is  
19 Lake Washington Boulevard.

20 4. Along the southern property line, the site abuts the SE 60th Street right-of-way. The  
21 improved section of the SE 60th Street right-of-way ends approximately 220 feet from the edge  
22 of the I-405 right-of-way. Unimproved 60th Street right-of-way occupies the intervening space.  
23 On the south side of SE 60th at the end of the improved section is the home of appellant Roger  
24 Chiou. His home is among the large residences on sizable lots along that street.

25 5. At the north end of the site, 110th Avenue SE ends at the property line. Directly north  
26 along that street are more pre-existing Kimberlee Park homes.

27 6. The previously developed Kimberlee Park areas are zoned R-3.5 with lots ranging  
28 between 9,542 square feet and 24,590 square feet. The area to the south is zoned R-3.5 and R-5,  
29 but the residences there are very large and the lots sizes exceed 35,000 square feet.  
30

7/28/2011

1 7. The project site itself is free of development and much of it is heavily forested. The  
2 vegetation consists of medium to large diameter maple, fir, alder and cedar trees with an  
3 understory of brush, ferns and blackberries. The northern portion of the site was previously  
4 cleared and the vegetation there is less dense.

5 8. In the easternmost and central portions of the site is a ravine that contains a stream  
6 which drains from east to west. Steep slopes of 40% or greater form the sides of the ravine,  
7 splitting the site between two separate areas where development may occur. The watercourse  
8 within the ravine is an intermittent stream that does not support fish. It conveys runoff from the  
9 site to the west, discharging to a roadside ditch along I-405. The ditch leads to a culvert running  
10 under the freeway and eventually the runoff discharges into Lake Washington

11 9. Five lots (1-5) are proposed for development on the south side of the ravine toward the  
12 west side of the parcel above the freeway. Twelve lots (6-17) are proposed for development on  
13 the north side of the ravine, also above the freeway. The lots range in size from 5,043 square  
14 feet to 9,844 square feet. The development on the site has been clustered to avoid most of the  
15 major critical areas.

16 10. The southwest boundary of the site, abutting proposed Lot 5, is bordered by the  
17 unimproved right-of-way for SE 60th Street. On the other side of this right-of-way area is  
18 Appellant Chiou's property. In this area is an earthen berm which is alleged to have been placed  
19 there to reduce noise from the I-405 freeway. This berm lies on the City's right-of-way and,  
20 perhaps, some of Chiou's lot. The berm will not be disturbed in connection with the subject  
21 project.

22 **Critical Areas**

23 11. Critical areas and buffers on site, including steep slopes and the stream, comprise  
24 3.99 acres. The Critical Areas Land Use Permit allows modifications which would remove or  
25 impact 18,972 square feet of steep slopes, steep slope buffer and stream buffer, leaving 3.55  
26 acres of critical area on the site. However, Native Growth Protection Areas (NGPAs) would be  
27 established, containing some non-critical areas so that a total of 4.07 acres would be protected  
28 from future development. In percentage terms, the existing critical areas and buffers take up  
29 53% of the site. Under the proposal, the area devoted to NGPAs would be 54% of the site.  
30

7/28/2011

1           12. The modifications of steep slopes proposed are to allow for access road construction  
2 and grading associated with home construction. Slopes to be modified are found in both the  
3 north and south portions of the site. On the north, isolated slopes on proposed residential lots  
4 would be regraded. On the south, portions of critical area would be altered to accommodate the  
5 access road to Lots 1 through 5.

6           13. Initially access for the entire project was proposed by extending 110th Avenue SE  
7 south to all lots. This would have required Lots 1 through 5 to be accessed by a bridge across the  
8 ravine. The access to the south-side lots was changed to a separate private drive off of SE 60th  
9 Street to avoid having to build the bridge.

10           14. However, a small footbridge is proposed across the ravine to the east of the homes  
11 within the NGPA that spans the creek. This would be part of a trail through the woods that  
12 would provide a pedestrian connection between 110th Avenue SE and SE 60th Street. The trail  
13 would cross through critical areas but would be located so as to minimize its impact. It would  
14 avoid significant trees, be composed of mulch or wood chips, and be limited to six feet in width.

15           15. Some minor temporary critical area disturbance could occur through extending sewer  
16 and storm lines to or across the stream. Any utilities crossing the stream would be bored  
17 under it, unless it is proven that boring is not feasible. If boring is not feasible, a full dewatering  
18 plan with turbidity monitoring and erosion control would be required before construction is  
19 permitted. Areas disturbed for such actions would be restored to the original condition. Such  
20 restoration would not count as mitigation.

21           16. Native plantings are proposed to mitigate for permanent buffer reductions. This  
22 would be accomplished by a minimum 1:1 mitigation ratio. The submitted plan proposes to  
23 enhance 20,800 square feet. Moreover, buffers would be enhanced by removing non-native  
24 invasives (e.g. Himalayan blackberry), debris, and garbage. Such weed, debris and garbage  
25 removal would occur throughout the NGPA areas. Overall, it is anticipated that a net gain in  
26 critical area buffer functions would occur.

27           17. Onsite construction would require the removal of some existing trees and vegetation  
28 to allow for homes and roads. Fifty-seven percent (57%) of the total diameter inches of trees on  
29 site are proposed to be retained. Most of the significant trees being retained are within the  
30 NGPA areas.

7/28/2011

1 18. The Critical Areas Permit sought was granted administratively and not appealed.  
2 The approval allows the development that would occur within critical areas and buffers on the  
3 basis that "no technically feasible alternative with less impact" on these areas that exists. In  
4 particular the private drive off of SE 60th Street is seen as having a lesser impact than would a  
5 roadway bridge across the ravine linking the residential lots.

6 **Houses**

7 19. As noted, the houses would be clustered on the west side of the parcel. This is  
8 considered to be the least sensitive portion of the site. To the extent possible, the existing  
9 topography is to be maintained. The homes are to be keyed into the slopes and the site layout  
10 and housing designs have been modified to minimize excavation and the use of fill. The  
11 proposal would maintain existing grades where adjacent to neighboring property (i.e, between  
12 Lots 12-17 and the existing development upslope to the east). Large retaining walls around the  
13 perimeter and steep artificial slopes without retaining walls have largely been eliminated from  
14 the plans.

15 20. However, retaining walls would have to be used in connection with the southern  
16 access road to minimize impacts on the critical area buffer, and other small retaining walls might  
17 be needed around housing units.

18 21. The current house designs have been revised to include three slightly different layout  
19 options in order to respond to code constraints and site conditions. The target square footage of  
20 proposed house types in 3,000 to 3,200 square feet. As a result of keying the foundations into  
21 the existing topography, the front or back facades would be one or two floors while the opposite  
22 side would be three floors in order to maintain existing grade. This means that houses on the  
23 east side of 110th Avenue SE would present a three-story facade to the street.

24 22. Pitched metal roofs with a matte finish of a neutral color are proposed with a low  
25 slope of 2:12. Exterior materials would include horizontal siding, low emissivity glazing, and  
26 masonry. The applicant estimates target prices comparable to or higher than homes in the  
27 vicinity.

28 23. Plats with critical areas or critical area buffers are subject to dimensional standards  
29 for conservation subdivisions or, for matters not addressed by the conservation standards, by the  
30 normal standards for the zone. The proposed development meets all of the applicable standards

7/28/2011

1 for the R-3.5 zone, except minimum lot area and lot width. These are proposed to be modified  
2 through the PUD process, which explicitly allows such modification of zoning requirements (See  
3 LUC 20.30D.165.)

4 24. The minimum lot area for a conservation subdivision in the R-3.5 zone is 6,500  
5 square feet. The request is to modify this minimum to allow a proposed range of lot sizes that  
6 has 5,043 square feet as the smallest lot and 6,449 square feet as the average lot size. There are  
7 nine lots below 6,500 square feet.

8 25. The minimum lot width for the R-3.5 zone is 70 feet. The request is to modify this to  
9 allow lot widths as narrow as 45 feet. All of the lots are less than 60 feet wide.

10 26. The proposal for 17 units is within the standard density allowed for R-3.5 zoned  
11 property containing critical areas. No bonus density is proposed under the PUD.

12 27. On the perimeter of the development, plans call for Type 3 landscaping. Type 3 is  
13 intended to provide visual separation of compatible uses. It is far short of screening, involving  
14 the planting of evergreen and deciduous trees no less than six feet high at intervals no greater  
15 than 30 feet on center. Lots which directly abut existing development (Lots 5,6 and 13-17)  
16 would be landscaped the full width of the rear and side setbacks, creating landscape buffers 10 to  
17 15 feet in width. Interior landscaping is also proposed between each lot and in the front yards.

18 28. Except where the proposed northerly homes are adjacent to existing homes along  
19 110th Avenue SE, the developed area of the site will be below the bordering residences and this  
20 lower elevation will largely eliminate view obstruction. However, this elevation difference also  
21 limits the ability of landscaping to hide the new homes from view. And without question the  
22 new houses will be something strikingly different to look at from the present forested scene.

23 29. The new houses will also be significantly different from the houses in the existing  
24 Kimberlee Park developments. The neighborhood is an established one which was developed  
25 with a wide variety of housing designs by custom development on a lot-by-lot basis.  
26 Nonetheless, the area is generally characterized by two story construction, sizable separations  
27 between houses, ample setbacks, manicured landscaped yards, and an overall predominance of  
28 horizontal elements in the houses.

29 30. The houses proposed for the PUD, on the other hand, would be squeezed onto  
30 narrower and smaller lots and would contrast with the existing neighborhood by their closeness

7/28/2011

1 to each other and the impression of greater verticality. While there is some variety of design, the  
2 models presented do not appear radically different from one another.

3 31. The Staff Report in describing "neighborhood character and compatibility" states the  
4 following:

5 The existing neighborhood is single-family residential with  
6 individual, detached houses on separate lots. The proposed  
7 development maintains this development pattern. The surrounding  
8 houses are multi-floor structures with pitched roofs (gable, gambrel  
9 and hipped), with overhangs and varying exterior cladding materials  
10 and accessory decks and patios. The proposed development is  
11 consistent with these features. Where adjacent to existing development,  
12 perimeter landscaping is provided to buffer the development from  
13 adjacent properties. Each lot in the surrounding neighborhood is  
14 serviced by an individual driveway and garage which the proposed  
15 development also provides. Some houses also gain access to the  
16 public right-of-way via private roads, similar to what is proposed. The  
17 proposed extension of 110th Avenue SE matches the existing roads  
18 for width and provides a turn-around for the use of not only future  
19 residents but those living adjacent to this site.

20 32. This description fails to note the crucial differences between the proposed housing  
21 and the existing neighborhood -- the clustering and the relative sameness of the new homes.  
22 They would not exhibit the scale, mass or architectural design of the existing Kimberlee Park  
23 homes. Differences from the existing homes to the south of the site would be even more  
24 dramatic.

25 33. Viewed in isolation, the design of the project is appropriate to the physical  
26 characteristics of the site. But, the new clustered housing would not look anything like the  
27 adjacent spread-out neighborhood. The design and placement of the houses would differ  
28 markedly in character and appearance from development in the immediate vicinity.

29 34. The current residents of the neighborhood say they are not against developing the  
30 Kimberlee III property, but they think the new housing along 110th Avenue SE should complete  
the existing pattern. There was no dissenting public testimony on the assertion of  
incompatibility.

7/28/2011

1           35. The architect for the applicant testified, in effect, that it is not possible to create a lot-  
2 by-lot custom home development with greater architectural diversity in today's economic  
3 environment.

4 **Roads/Traffic**

5           36. The two separated groups of houses proposed would have separate access roads. At  
6 the north, 110th Avenue SE would be extended onto the site and would terminate in a cul-de-sac.  
7 This extension is proposed as a private road, designated as Tract A. The plans show a 28-foot-  
8 wide paved surface in the middle of a 48-foot right-of-way. A five-foot sidewalk would be built  
9 on the eastern side. Cement concrete curbs and gutters would be installed. The cul-de-sac would  
10 have a 100-foot diameter. The width of the street extension would match the existing street  
11 width of 110th Avenue SE. Each the northerly lots would have its own individual driveway  
12 from the access road to a garage. Parking along the roadway would be allowed.

13           37. At the south, a private accessway (Tract B) would be constructed off of SE 60th  
14 Street commencing upslope from the proposed lots. This accessway, to be called SE 60th Lane,  
15 would descend to the lots via a 20-foot-wide paved roadway. A significant retaining wall would  
16 be required. Again concrete curbs and gutters would be installed. Cutting and filling would  
17 permit a road slope no greater than 15%. This proposed access was located so as to have the  
18 least impact on the stream and buffer. The private drive would terminate in a kind of  
19 hammerhead from which driveways for the homes would extend.

20           38. In connection with the southern access, pavement on SE 60th Street would be  
21 widened to 24 feet (two 10-foot travel lanes plus a four-foot shoulder along the northern side for  
22 pedestrian access). Improvements would be required at the intersection of SE 60th Street and  
23 Lake Washington Boulevard are to improve sight distance, pavement markings, and signs.

24           39. The private access roads would not be gated or obstructed but would have to remain  
25 open at all times for emergency and public service vehicles. A public pedestrian easement would  
26 need to be provided along the private portion of 110th Avenue SE and along the trail connection  
27 between 110 Avenue SE and SE 60th Street.

28           40. The Transportation Department reviewed the project and found that the 17 new pm  
29 peak hour trips generated by the development are already accounted for within the anticipated  
30 growth of this area and do not require additional study. The development-generated increase in

1 traffic is not enough to trigger a concurrency analysis. The City's traffic reviewers concluded that  
2 there is ample additional traffic capacity at nearby intersections and streets to accommodate the  
3 low volume of new trips generated. The current Level of Service would not be lowered.

4 41. The Transportation Department specified road construction standards, street  
5 frontage improvements, and improvements to existing roadways which, in their view, would be  
6 adequate to meet standards and handle impacts of the development. The Fire Marshal reviewed  
7 the plans and was satisfied that adequate ingress and egress would be provided for fire and  
8 emergency equipment. Vehicle turnaround requirements would be met. Hydrants would be  
9 required at appropriate locations.

10 42. Required parking would be accommodated in garages with additional parking in each  
11 driveway. During the course of the hearing, the Fire Department removed a proposed condition  
12 banning parking along the extension of 110th Avenue SE. Parking would therefore be allowed  
13 along both sides of the street there. For the southerly homes, the City concluded during the  
14 hearing that additional parking space would not need to be provided. Therefore, a guest parking  
15 lot proposed above Lots 1 through 5 along SE 60th Street was removed from the proposal, as  
16 was a foot path leading down to the homes from that lot. However, parking along SE 60th Lane  
17 would not be allowed and that accessway would be posted "Fire Lane-No Parking" on both sides.

18 43. There was anecdotal evidence about traffic dangers, especially during winter weather  
19 and about irritating traffic queues on Lake Washington Boulevard. But there was no expert  
20 analysis that supports a finding that the proposed development will significantly exacerbate  
21 existing traffic conditions. Further there was no convincing evidence that parking overflows onto  
22 neighboring properties would likely be common. The Examiner finds that the traffic and road  
23 reviews for this project by the Transportation Department and the Fire Marshal were sufficient  
24 and he accepts their conclusions.

### 25 **Geotechnical Stability**

26  
27 44. A Geotechnical Engineering Study, dated April 3, 2008, was prepared by Earth  
28 Consulting Incorporated. Based on observed conditions, the study determined that the western  
29 half of the site, where construction will occur, does not meet the requirements of a landslide  
30 hazard area, except for localized areas with slope gradients of 40% or greater. A 25-foot  
foundation setback from the 40% or greater slopes was recommended to provide protection from

7/28/2011

1 potential future landslide activity. For development adjacent to steep slope areas, design  
2 measures such as revegetating regraded or cleared slopes and controlling surface water runoff  
3 were suggested in order reduce the likelihood of localized shallow debris flows or erosion.

4 45. The geotechnical study noted that the proposed driveway to the southerly five homes  
5 is planned to extend along the northern edge of a north-facing steep slope that descends from SE  
6 60th Street. The area appears to have been created from grading of the adjacent street and  
7 contains erosional features. It is a local dump for yard debris. The study stated:

8 In our opinion this slope is not stable in its present condition . . . . The  
9 proposed roadway is feasible, provided the yard waste is removed from  
10 the slope area, the slope is regraded and revegetated, and surface water  
11 from SE 60th Street is diverted away from the top of the slope.

12  
13 Overall, the study concluded that, if its recommendations were followed, the proposed  
14 development could be completed as planned and "should not reduce the stability of site slopes."

15 46. The geotechnical study contained recommendations for surface water and shallow  
16 ground water control, site preparation and general earthwork, foundations for residences, slab-  
17 on-grade floors, retaining walls, seismic design considerations, excavations and slopes, site  
18 drainage, utility support and trench backfill, and pavement. There is no science-based evidence  
19 that substantially contradicts the findings of the geotechnical study.

20 **Drainage**

21 47. According to the impervious surfaces plan, the largest surface coverage proposed for  
22 an individual lot is 40.1 percent. In terms of the total site, impervious surface coverage would be  
23 just 18.8 percent. The geotech report recommends that water from impervious surfaces be tight-  
24 lined to a permanent drainage facility to prevent discharge onto slopes.

25 48. The storm drainage system proposed is intended to carry out this recommendation.  
26 Prior to discharge, the rain water would be routed through a system of drains to underground  
27 storage vaults. The vaults (one north of the ravine and another to the south) should be sized to  
28 hold storm water and release it to the stream slowly at pre-project rates. The discharge from  
29 each vault would be tightlined down the bank to an outfall to the creek. The outfalls would  
30 contain rock paths intended to dissipate energy in order to prevent erosion. The natural slopes  
draining to the stream would be left undisturbed and fully vegetated.

7/28/2011

1           49. The appellant presented a report and testimony from a highly qualified professional  
2 engineer and hydrologist who had reviewed the site plan, the drainage report, soils information  
3 and aerial photographs of the site. In his expert opinion, the stormwater analysis prepared for the  
4 project does not present enough detail to assure that there will be no adverse impacts related to  
5 surface water resulting from the project. He questioned the practicality of safely conducting  
6 stormwater from various project areas to the vaults. He questioned whether the tightline from  
7 the stormwater vault could be made to remain anchored to the slope. He noted that the drainage  
8 report has no discussion of how water quality treatment will be provided prior to release of  
9 stormwater.

10           50. Most seriously he questioned the detention volume calculations in the stormwater  
11 analysis, stating that they are based on an incorrect characterization of the site's vegetative cover,  
12 and on incorrect concentration time assumptions for the site conditions. The assumptions used,  
13 he said, result in the stormwater vaults being undersized. He calculated a need for storage  
14 volume almost twice that proposed. He concluded that the steepness and soils make  
15 this a challenging site from the design standpoint and concluded that more detailed analysis is  
16 needed.

17           51. The City's witness on drainage testified that he has looked at the plans and the  
18 various technical reports for the project. He said he agreed with the assertion that the storm  
19 water analysis for the project does not present enough detail to be sure the project has no adverse  
20 impacts, but he emphasized that the level of planning at this stage is just conceptual. In his view,  
21 the information provided was sufficient to show that the project is feasible and that technical  
22 details can be worked out when final engineering plans are submitted. He said it is possible that  
23 larger detention facilities would be needed, but said that, from looking at the plans, he believes  
24 there is enough room to provide a facility two or three times as large as proposed. He did not  
25 visit the site.

26           52. The citizen opponents also introduced a report by a professional engineer which took  
27 issue with the project's drainage report. In the main, this criticism focused on matters omitted,  
28 such as a description of stormwater treatment and design of facilities, lack of an erosion and  
29 sediment control plan, lack of a maintenance and operations manual. Though provided an  
30 opportunity to do so, the City did not respond to this report.

7/28/2011



1 were incorporated into the subdivision ordinance it does not matter whether the drainage  
2 regulations are characterized as "land use controls."

3 4. The administrative decision on the Critical Areas Permit was not timely appealed and  
4 therefore represents a final decision. Accordingly no questions as to the adequacy of the  
5 mitigation for critical area modifications can be entertained.

6 **SEPA**

7 5. A DNS may be overturned on one of two bases: (a) the facts show a reasonable  
8 likelihood of more than a moderate adverse impact on environmental quality and therefore  
9 "nonsignificance" is not proven (WAC 197-11-340); or (b) the threshold determination was not  
10 shown to be "based upon information reasonably sufficient to evaluate the environmental  
11 impact" of the proposal (WAC 197-11-335).

12 6. Because more information is needed in order to evaluate the feasibility of the  
13 proposed drainage facilities on the site, the environmental review here was based on insufficient  
14 information. Under the circumstances, the DNS must be overturned.

15 **Planned Unit Development**

16 7. The PUD mechanism is commonly used to allow the clustering of homes on the  
17 buildable portion of property that contains significant space in critical areas. The idea is to allow  
18 something akin to the standard per-acre density for the site while preserving the critical natural  
19 features. To do this, the standard dimensional criteria for the zone are modified, usually at least  
20 in terms of smaller lot sizes. On a stand-alone basis, the subject proposal is for a typical PUD.

21 8. However, the criteria for PUD approval dictate an evaluation of how the new  
22 clustered development will fit into the larger surrounding neighborhood. The key requirements  
23 in this regard are those relating to "compatibility." The relevant subsections, LUC  
24 20.30D.150(D) and LUC 20.30D.150(H), read as follows:  
25

26 The City may approve . . . a Planned Unit Development, if:

27 D. The perimeter of the Planned Unit Development is compatible with the  
28 existing use or property that abuts or is directly across the street from the  
29 subject property. Compatibility includes but is not limited to size, scale,  
30 mass and architectural design of proposed structures.

H. The design is compatible with and responds to the existing or intended

7/28/2011

1 character , appearance, quality of development and physical characteristics of the  
2 subject property and immediate vicinity.

3 These standards focus on the structures to be erected in the PUD and on their appearance in  
4 relation to development in the vicinity.

5 9. "Compatibility" is not wholly undefined. Descriptive words, such as "size, scale,  
6 mass, architectural design, character, appearance, quality," are used to provide some measure of  
7 objectivity. These words do not preclude approval of different-looking development per se, but  
8 they represent an attempt to describe the limits of differentness that will be tolerated within an  
9 established built environment.

10 10. While the question of compatibility is, of course, not a question that can be decided  
11 by a vote, it is interesting to note that there was total unanimity among the public participants in  
12 this proceeding that the proposed structures do not meet the compatibility standard. This widely  
13 shared sentiment while not determinative is entitled to some weight, at least in the absence of  
14 any countervailing presentation by the applicant.

15 11. On the matter of compatibility, the applicant here was strangely silent. His consultant  
16 testified that the proposal was an environmentally responsible one, given the constraints of the  
17 site, but not about compatibility. His architect justified the layout and housing selected  
18 essentially on an economic basis. The narratives provided in the record shed little light on the  
19 compatibility issue.

20 12. In hearings on the approval of PUD's and preliminary plats, "the applicant carries the  
21 burden of proof and must demonstrate that a preponderance of evidence supports the conclusion  
22 that the application merits approval." In all other cases the Hearing Examiner must deny the  
23 application. LUC 20.35.140(A).

24 13. In the present instance, the applicant simply did not provide a substantial case on the  
25 subject of compatibility and therefore did not carry his burden. Accordingly, the application  
26 must be denied.

27 **Preliminary Subdivision**

28 14. In order to approve a preliminary plat, the Hearing Examiner must be convinced of  
29 "the general acceptability of the layout." LUC 20.45A.170. This cannot be done if there is a  
30 substantial question about some aspect of project feasibility.

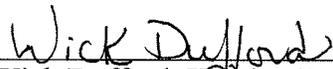
7/28/2011

1 15. The decision criteria require a finding that a preliminary plat makes "appropriate  
2 provisions for" various enumerated items of infrastructure, including "drainage ways." LUC  
3 20.45A.140(A). Because more information is needed to determine the feasibility of the drainage  
4 facilities, the Examiner cannot make this finding as to drainage, and therefore cannot approve the  
5 plat.

6 **DECISION**

7 The SEPA appeal is granted. The DNS is overturned. The applications for PUD  
8 approval and for Preliminary Plat approval are denied.

9 **SO ORDERED**, this 28th day of July, 2011.

10  
11   
12 Wick Dufford, Hearing Examiner *SD*

13  
14 **NOTICE OF RIGHT TO APPEAL**  
15 (Pursuant to Resolution No. 5097)

16 **RIGHT TO APPEAL-TIME LIMIT**

17 A person who submitted written comments to the Director prior to the hearing, or  
18 submitted written comments or made oral comments during the hearing on this matter, may  
19 appeal the decision of the Hearing Examiner to the Bellevue City Council by filing a written  
20 appeal statement of the Findings of Fact or Conclusion being appealed, and paying any appeal  
21 fee, no later than 14 calendar days following the date that the decision was mailed. The appeal  
22 must be received by the City Clerk by **5:00 p.m. on August 11, 2011.**

23 **TRANSCRIPT OF HEARING-PAYMENT OF COST**

24 An appeal of the Hearing Examiner's decision requires the preparation of a transcript of  
25 the hearing before the Hearing Examiner. Therefore, the request for appeal must be  
26 accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the  
27 deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript  
28 preparation be more than the deposit, the appellant will be additionally charged.

29 **WAIVER OF TRANSCRIPTION FEE**

30 Upon request, the City Clerk will waive transcription fees upon submission by an  
appellant of the following documentation: a) an affidavit stating that the appellant's net financial  
worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does  
not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of  
those parts of the record the party thinks are necessary for review; e) a statement that review is  
sought in good faith.

The transcription fee waiver is available to individuals over eighteen (18) years of age  
and is not available to corporations, companies, partnerships, or any business, enterprise,  
community club or and social recreational organization.

7/28/2011