



Pierce County

Office of the Pierce County Hearing Examiner
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ENGINEERING FILE

STEPHEN K. CAUSSEAU, JR.
Pierce County Hearing Examiner

ENGINEERING FILE

August 24, 1999

Cascadia Development Corporation
500 108th Avenue NE, Suite 1850
Bellevue, WA 98004

RE: **CASCADIA EMPLOYMENT BASED PLANNED COMMUNITY (EBPC)**

Dear Applicant:

Transmitted herewith is the decision of the Pierce County Hearing Examiner regarding the request for reconsideration filed in the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/ca

cc: Parties of Record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

DECISION ON REQUEST FOR RECONSIDERATION

CASE NO.: CASCADIA EMPLOYMENT BASED PLANNED COMMUNITY (EBPC)

APPLICANT: Cascadia Development Corporation
500 108th Avenue NE, Suite 1850
Bellevue, WA 98004

AGENTS: Gordon, Thomas, Honeywell
Attn: Bill Lynn
P. O. Box 1157
Tacoma, WA 98401-1157

Lowe Enterprises Northwest, Inc.
Michael J. Brooks, Project Manager
600 University St., Suite 2820
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On June 18, 1999, the Examiner issued a Report and Decision conditionally approving the Cascadia Employment Based Planned Community. On June 28, 1999, the Examiner extended the date for filing Requests for Reconsideration to July 15, 1999, based upon the length (125 pages) and complexity of the decision. Timely requests for reconsideration were filed by Steven J. Brown, attorney at law on behalf of Troutlodge, Inc., on June 29, 1999; by Pierce County Planning and Land Services (PALS) on July 15, 1999; and by the Washington State Department of Transportation (WSDOT) on July 15, 1999. William Lynn, attorney at law, responded to PALS and WSDOT's reconsideration request in a memorandum dated July 26, 1999. Mr. Lynn also advised that Cascadia had no objection to the relief requested in the Troutlodge reconsideration request. The Examiner elected not to circulate the reconsideration request to parties of record, but did receive a letter objecting to the decision from Jane M. Kelley, president, Friends of Fennel Creek.

The following documents are hereby made exhibits to the record:

- EXHIBIT "1R" - Request for Reconsideration filed by PALS dated July 15, 1999
- EXHIBIT "2R" - Request for Reconsideration filed by WSDOT dated July 15, 1999

- EXHIBIT "3R" - Letter to Examiner from Jane M. Kelley dated July 20, 1999
- EXHIBIT "4R" - Letter to Examiner from William Lynn dated July 26, 1999
- EXHIBIT "5R" - Cascadia's Response to WSDOT Request for Reconsideration dated July 26, 1999
- EXHIBIT "6R" - Request for Reconsideration filed by Troutlodge, Inc. dated June 29, 1999
- EXHIBIT "7R" - Letter to Examiner from Steven Brown dated August 13, 1999

Based upon the reconsideration requests and responses thereto the Examiner hereby makes additional findings as set forth hereinafter:

PALS RECONSIDERATION REQUEST

1. Reconsideration requests were made by Sam Yekalam, senior planner, Mitchell Brells, Development Engineering supervisor, and Rory Grindley, associate traffic engineer. The following alphabetical findings address the issues raised by Sam Yekalam in the order presented:
 - A. Mr. Yekalam requests that the decision reference the Endangered Species Act (ESA) and its possible impact on the development. Finding 84A specifically refers the ESA and the listing of the Chinook Salmon as a threatened or endangered species. The Examiner does not have jurisdiction to rule whether or not the Chinook Salmon listing will apply to Cascadia, and if so, how. Regardless of what this decision states, the ESA and Court interpretations will determine its applicability. The Examiner need not to cite every applicable Federal and State law and Pierce County ordinance in order to make them applicable to a proposed land use project.
 - B. In Finding No. 85 the Examiner resolved issues regarding recommended conditions of approval still in question. However, Condition 93 does not include accessory dwelling units as counting toward the total number of dwelling units allowed on Parcel P (112). The decision is clarified to restrict the total number of dwelling units allowed on Parcel P to 112, which number includes accessory dwelling units.
 - C. In Finding No. 86, a typographical error is corrected by substituting the word "unless" for the word "less" on the fourth line from the top of page 101. The

Examiner contemplates a public hearing every five years to review the development agreement similar to those hearings presently held to review the Gem Heights PDD and the Silver Creek PDD. The Examiner has never made a fee recommendation to the Pierce County Council and believes such decisions are best left to the legislative process.

- D. The last word of Condition 52 is changed from "rockereries" to "rockeries".
- E. Staff asserts that Conditions 61-63 which address the development agreement do not include the requirement of a five year review period. However, Condition 129 requires that Cascadia be reviewed and evaluated by the Examiner and the PALS director at least every five years until build out. Condition 129 was intended to implement issue number 9 in the memorandum from Chuck Kleeberg to the Examiner dated May 13, 1999, (Exhibit "184").
- F. Pursuant to PALS' request Condition 77 is revised to require submittal of the design handbook prior to submittal of the application for the first preliminary plat. In the third line of said condition, the words "development approval" are removed and the words "submittal of the first preliminary plat application" substituted.
- G. Pursuant to PALS' request the first sentence of Condition 78 is hereby revised to read as follows:
 - Landscaping shall conform to PCC Section 18A.325.030, except as modified in the design handbook which must be reviewed and approved by Pierce County Planning and Land Services.
- H. Pursuant to PALS' request Condition 135 which adds a new section to the development agreement is hereby revised. Said condition contains a definition of "minor modifications" which is hereby revised as follows:

Minor modifications are defined as those which do not increase the density by more than 10% of the total number allowed for the project or phase, those which do not decrease net residential density, those which do not increase impacts on transportation or the environment, those which do not reduce buffers or open space, and those which do not decrease the amount of commercial and

industrial acreage.

The first line of the introductory section of Condition 135 is hereby revised by substituting the word "shall" for the word "should".

2. In response to the reconsideration request filed by Mitchell Brells, the following findings are hereby made as follows:

A. The second sentence in Finding 35 is hereby revised to read as follows:

At a later point in the development, a more direct route connecting: 198th Avenue/199th Avenue will be constructed by the applicant in accordance with the project scope for this facility included in the County's Transportation Improvement Program and with the possible assistance of the County for right-of-way acquisition.

B. As requested by Mr. Brells, Condition No. 27 is hereby eliminated as such requirements are covered by the Pierce County Storm Water Management and Site Development Manual, Ordinance No. 96-46S2.

C. Pursuant to Mr. Brells' request Condition No. 31 is hereby eliminated.

3. In response to the reconsideration request made by Rory Grindley, the following findings are hereby made as follows:

A. While the Examiner agrees with Mr. Grindley's analysis of Finding No. 61, it is not necessary to change said finding. Therefore, Finding 61 will remain as written.

B. Pursuant to Mr. Grindley's request the last sentence of Finding No. 66 is hereby revised to read as follows:

Thus, all impacted intersections on both State highways will likely be mitigated.

RECONSIDERATION REQUEST OF TROUTLODGE, INC.

4. The Examiner neglected to include as a condition of approval the requirement that the applicant comply with the settlement agreement entered between Troutlodge, Inc., and Cascadia Development Corporation (Exhibit "170"). Therefore, the following condition is hereby added as follows:

The obligations (covenants) of Cascadia as set forth in the Settlement Agreement entered by Troutlodge, Inc., and Cascadia Development Corporation dated March 30, 1999, shall become conditions of approval of the Cascadia EBPC and enforced in the same manner as other conditions imposed by Pierce County.

RECONSIDERATION REQUEST OF WSDOT

5. WSDOT acknowledges that the Examiner "properly and correctly cited all of the applicable legal principles in Findings 40 through 50 of the decision" relating to mitigation of probable, significant, adverse, environmental impacts. However, WSDOT asserts that the Examiner improperly applied said legal principles to the facts and therefore did not require the significant traffic mitigation which it requested.
6. In Findings 35 through 68 (pages 72-85) the Examiner does not prohibit the State or County from requiring mitigation of a "preexisting deficiency" (See Finding No. 65), but finds that the applicant's responsibility for improvement is based upon its proportionate contribution of traffic. Furthermore, Finding 55 does not state that no "impact" occurs unless the development causes a violation of the three hour screen line volume to capacity ratio. The Examiner simply reiterated the County's expert testimony and the Walchli testimony that Cascadia traffic will not exceed any of said such screen lines. However, the Examiner did not find that Cascadia would create no traffic impacts. If such were the case, then no mitigation could be required.
7. The Examiner cannot accept WSDOT's position that a developer contributing 8% of the total volume to an intersection would be obligated to pay 100% of the cost of improving the intersection, as such violates the "rough proportionality" test. The Examiner required the applicant to contribute its proportionate share for improvement of all impacted intersections, but transferred those proportionate funds to ensure construction of critical improvements needed to accommodate Cascadia traffic.
8. The Examiner likewise cannot accept WSDOT's requirement that "the predevelopment level of service" be restored, regardless of whether that


predevelopment level is "acceptable" or "failing". While WSDOT states that implementation is up to the developer and can be as broad or narrow as the range of engineering solutions dictates, such might include the construction of a second Narrows Bridge, or in the present instance the construction of intersection improvements and traffic signals which would mitigate far beyond impacts caused by the development. WSDOT provided no alternative mitigation to full intersection improvements for the three intersections along SR-162.

9. WSDOT correctly asserts that Section 19A.100.010(C)(4)(e) of the Pierce County Code (PCC), a portion of the 1994 Pierce County Comprehensive Plan, adopts the level of service for urban highways, HOV lanes, and rural highways "as adopted by WSDOT". However, Federal and State roads are classified as Category D facilities, and according to PCC 19A.100.030(C), only Category A and B public facilities are subject to the concurrency requirement. Section 19A.100.030(D) PCC requires the County to annually review Category C and D public facilities to determine if sufficient capacity exists to meet the needs for levels of service of existing and approved development.
10. WSDOT asserts that the Grindley memorandum (Exhibit "84") is a Pierce County policy which can be used as a basis for SEPA mitigation. However, this traffic engineering policy has never been adopted by the Pierce County Council pursuant to RCW 43.21C.060. The Examiner has reviewed the balance of the WSDOT reconsideration request, but remains satisfied that the mitigation required of the applicant to State highways is roughly proportionate to its impact.

DECISION:

The request for reconsideration is hereby granted in part and denied in part as set forth in part.

ORDERED this 24th day of August, 1999.


STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 24th day of August, 1999, to the following:

APPLICANT:

Cascadia Development Corporation
500 108th Avenue NE, Suite 1850
Bellevue, WA 98004

AGENTS FOR APPLICANT:

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PIERCE COUNTY PLANNING DIVISION
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 PIERCE COUNTY RESOURCE MANAGEMENT

**CASE NO. CASCADIA EMPLOYMENT BASED PLANNED
COMMUNITY (EBPC)**

APPEAL OF EXAMINER'S DECISION: The final decision by the Examiner may be appealed in accordance with the Land Use Petition Act, Chapter 347, Laws of 1995, Sections 701-719, and Pierce County Ordinance No. 96-19S and RCW 36.70C.