

Metropolitan King County Council
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MEMORANDUM

DATE: April 24, 2013
TO: Metropolitan King County Councilmembers
FROM: David W. Spohr, Interim Deputy Hearing Examiner
RE: Nelsen-Catterall preliminary plat appeal

In June 2012 the previous examiner approved, with conditions, an eighty-lot subdivision, Nelsen-Catterall, along Issaquah-Pine Lake Road and adjacent to the City of Sammamish (City). The subdivision to the south, Brookshire Estates, timely appealed to the Council. In December 2012, the Council concurred with the examiner's decision, but added an amendment related to the intersection of Issaquah-Pine Lake Road and the route serving both subdivisions. The applicant timely moved for reconsideration. In March 2013, the Council remanded the matter to me for further consideration.

The crux of the controversy involves the paragraph related to the applicant's required intersection improvements. The June 2012 examiner decision required the applicant to install a temporary signal, but essentially allowed that *if* the City preferred an interim roundabout in lieu of the temporary signal, the applicant *could* construct the roundabout instead of the signal. The Council's December 2012 amendment effectively removed the applicant's veto power. Under the amendment, *if* the City preferred an interim roundabout in lieu of the temporary signal, then the applicant *had to* construct the roundabout instead of the signal. The applicant objected to this.

At the conference to schedule the remand hearing, the applicant produced a recent email from the Sammamish City Engineer concluding that, "The City is in agreement that an interim traffic signal is the appropriate solution to be constructed." Under either the original June 2012 or the amended December 2012 language, the City's determination is conclusive. One never reaches the disputed second step (*i.e.* should the applicant have the ability to veto the City's selection of a roundabout). The applicant's motion for reconsideration is effectively mooted.

Appellant, Brookshire Estates concurred with this assessment, and declined further involvement. To insure a clean record, on April 2, 2013, I issued a new decision (excerpt attached), which clarified the intersection language, provided any interested party two weeks for filing a notice of appeal, and stated that absent a timely appeal, the Clerk of the Council would place on the Council's consent agenda a proposed ordinance implementing the new examiner decision.

No appeal has been lodged. The attached ordinance concurs with the new examiner decision.

Rod Dembowski District 1
Larry Phillips District 4
Pete von Reichbauer District 7

Larry Gossett District 2
Julia Patterson District 5
Joe McDermott District 8

Kathy Lambert District 3
Jane Hague District 6
Reagan Dunn District 9

15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation tract and critical area tract(s).

16. The version of this paragraph 16 in the previous examiner's June 2012 report stated that:

The following has been established by the MDNS issued under SEPA authority as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicants shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009. This includes the installation of a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way SE. Alternatively, an interim roundabout may be constructed in lieu of the temporary signal if it is determined by the City that an interim roundabout is feasible and will mitigate project impacts within the City, and the applicant and the City mutually agree that an interim roundabout shall be constructed in lieu of the temporary signal.

There were thus two components to whether the applicant would construct a roundabout or a traffic signal. First, the City would need to conclude that an interim roundabout is feasible and would mitigate project impacts within the City. Second, the City and the applicant would need to mutually agree to construct an interim roundabout in lieu of the temporary signal.

The neighbors to the south and east, Brookshire Estates, appealed that examiner's decision to the Metropolitan King County Council. Over the course of two sessions, the Council expressed concern about the Issaquah-Pine Lake Road/238th Way SE intersection. Testimony from the original examiner proceeding involving the potential traffic safety impacts a temporary traffic signal would likely create for drivers approaching the plat from the South, the relative inferiority of that temporary traffic signal versus an interim roundabout for handling plat traffic, and the costs of a temporary traffic signal and interim roundabout likely being "equivalent," was discussed at Council.

In December 2012, the Council adopted an amendment that changed the original Paragraph 16 to:

The following has been established, by the MDNS issued under SEPA authority and the testimony presented at the hearing, as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009, including installing a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way S.E., unless the City determines that an interim roundabout is feasible and will mitigate project impacts within the City, in which case the applicant shall construct an interim roundabout in lieu of a temporary signal.

The amendment effectively removed the applicant's veto power regarding whether the roundabout would be required. Under the amendment, if the City concluded that an interim roundabout was feasible and would mitigate project impacts within the City, the applicant would have to construct that interim roundabout in lieu of a temporary signal.

The applicant moved for reconsideration. On March 18, 2013, the Council held a hearing on the applicant's motion and determined that the original hearing examiner process, and the resulting record, did not adequately examine and compare a roundabout and traffic signal in terms of cost, safety, and traffic flow. As such, the Council was unable to make a determination about whether a mandatory roundabout provision is justified, and remanded the matter back to the current examiner for further consideration.

At the conference to schedule a remand hearing, the applicant produced a March 15, 2013, email from the Sammamish City Engineer concluding that, "The City is in agreement that an interim traffic signal is the appropriate solution to be constructed," and that "the significant resources involved with constructing an interim roundabout (both impacts to the traveling public and construction costs) outweigh the benefits of the roundabout as compared to the traffic signal."

Under either the original June 2012 or the amended December 2012 version of the traffic signal/roundabout language, the City's determination is conclusive, and one never reaches the disputed second step (i.e. should the applicant have the ability to veto the City's selection of a roundabout). The last sentence in the original examiner paragraph, the Council's amendment, and the applicant's motion for reconsideration, are all effectively mooted. Appellant, Brookshire Estates responded that, "In light of the lack of interest in the roundabout by the City of Sammamish as expressed in its email of March 15, appellant Brookshire will not be participating in further hearings as ordered by the Council on March 18."

Given this crucial new information, we conclude that there is no longer any need to hold a remand hearing. We thus re-issue paragraph 16 as follows:

The following has been established (by the MDNS issued under SEPA authority, the testimony presented at the original hearing, and the proceedings on remand) as a necessary requirement to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with this item prior to final approval.

The applicant shall comply with the Transportation Mitigation agreement with the City of Sammamish, dated April 1, 2009, including installing a temporary signal at the intersection of Issaquah-Pine Lake Road/238th Way S.E.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.