

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

In the Matter of the Application of	)	No. SUB 22-002
	)	
<b>Holli Heavrin, Core Design, Inc., on behalf of Sequim Washington Investments, LLC</b>	)	<b>Rolling Hills Subdivision</b>
	)	
For Approval of a Preliminary Plat and <u>Planned Residential Development</u>	)	DECISION ON REQUEST FOR RECONSIDERATION

**TO: PARTIES OF RECORD**

**BACKGROUND**

On July 28, 2022, the City of Sequim Hearing Examiner held an open record hearing on the above referenced matter utilizing a hybrid approach allowing participation in person or through remote access technology. Specifically, the Hearing Examiner considered a request by Holli Heavrin, of Core Design, Inc., on behalf of Sequim Washington Investments, LLC (Applicant) for a preliminary plat to create, in three phases, a 215-lot subdivision for single-family residential development, using the planned residential development provisions of the Sequim Municipal Code, on two parcels totaling 44.1 acres, located to the southeast of the intersection of McCurdy Road and South 7th Avenue. *Rolling Hills PP PRD, Findings, Conclusions, and Decision (No. SUB 22-022), dated August 25, 2022.*

In advance of the open record hearing, the Hearing Examiner reviewed several exhibits, including the application materials themselves; documents related to the environmental review of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW); technical reports; notice materials; project plans; numerous comments on the proposal from members of the public and from reviewing agencies and tribes; and responses to the submitted comments from the City of Sequim (City) and the Applicant. At the July 28, 2022, hearing, the Hearing Examiner heard testimony from City staff, members of the Applicant team, and several members of the public. In addition, as detailed in the Hearing Examiner’s August 25, 2022, decision approving the preliminary plat request, the Hearing Examiner left the record open until August 4, 2022, to allow for the submission of additional comments on the proposal from the public and until August 11, 2022, to allow the Applicant to provide a response to any additional submitted comments. The Hearing Examiner then reviewed and considered these additional materials—along with the previously submitted materials and testimony—prior to issuing the decision approving the preliminary plat request, with conditions.

To that end, the Hearing Examiner’s decision describes, in detail, the numerous comments opposing the preliminary plat request from members of the public that were submitted in

*Decision on Request for Reconsideration  
City of Sequim Hearing Examiner  
Rolling Hills Subdivision  
No. SUB 22-002*

advance of the hearing, expressed through testimony at the hearing, and submitted following the hearing, as well as the Applicant's and City's responses thereto. In summary, these concerns generally related to the density of the proposed development, its compatibility with the existing character of the neighborhood, the proposal's traffic and pedestrian safety impacts, existing road conditions, proposed street extensions, tree and vegetation removal that would be required to facilitate the development, and the proposal's impacts to perceived critical areas on-site. In approving the preliminary plat request, the Hearing Examiner determined that these concerns would be adequately addressed through the project's compliance with applicable municipal code requirements and/or through the 65 conditions imposed by the Hearing Examiner's decision as part of the preliminary plat approval.

Several concerns were also raised by members of the public about the adequacy of the City's notice of the application and associated hearing. Regarding these concerns, the Hearing Examiner determined that the City provided reasonable notice, reasoning:

Although concerns were expressed about the adequacy of the notice provided by the City, the record indicates that the City provided notice consistent with the requirements of the municipal code, and the effectiveness of the City's notice materials is further evinced by the numerous public comments submitted prior to the hearing and by the significant public participation at the hearing. Moreover, the Hearing Examiner left the record open for seven days following the open record hearing to allow for the submission of additional public comments on the proposal, alleviating any concerns about the notice provided in this matter.

*Rolling Hills PP PRD, Findings, Conclusions, and Decision (No. SUB 22-022), dated August 25, 2022.*

### **RECONSIDERTATION**

Sequim Municipal Code (SMC) 2.10.100 provides, "Prior to six days after the date of the hearing examiner's decision, a party of record may request reconsideration. The request must be in writing and directed to the city clerk or designee, who will forward the request to the hearing examiner within three business days. The request must specifically set forth errors of procedure, errors of law or fact, errors in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing."

In considering a request for reconsideration from a party of record, the Hearing Examiner shall do one of the following:

- A. Correct or amend the decision without an additional public hearing; or
- B. Set the matter for additional public hearing, in which case notice will be republished and provided to all parties of record; or
- C. Confirm the original decision.

*SMC 2.10.100.*

*Decision on Request for Reconsideration  
City of Sequim Hearing Examiner  
Rolling Hills Subdivision  
No. SUB 22-002*

“The hearing examiner’s decision is subject to only one reconsideration, even if the hearing examiner reverses or modifies the original decision.” *SMC 2.10.100.*

### Reconsideration Requests

The City received requests for reconsideration of the Hearing Examiner’s August 25, 2022, decision from several members of the public, which the City determined to be timely submitted. Specifically, the City received requests for reconsideration from Alma Seniuk, Steve Resende, Deborah Myers, Brenda Bigger, Bruce Shoup, Carey Birkenfel, Kathryn Lass, Kelli Phipps, Vern and Nancy McKim, Rick Olexick and Nancy Block-Olexick, Joan Cotta, Ben Fisher, Severne Johnson, Stephanie Nead, and Robert Bevins. Among the several members of the public submitting timely requests for reconsideration, only Joan Cotta, Ben Fisher, Severne Johnson, Stephanie Nead, and Robert Bevins are parties of record<sup>1</sup> who have standing to request reconsideration under SMC 2.10.100.<sup>2</sup>

The concerns raised in the reconsideration requests submitted by parties of record (and also by the remaining members of the public who do not qualify as parties of record) largely reiterate the concerns raised prior to, at, and after the open record hearing. Specifically:

- Joan Cotta raised concerns that the City did not provide adequate notice of the public hearing in accordance with the requirements of SMC 20.01.190.
- Ben Fisher raised concerns that the proposal’s anticipated traffic impacts to the intersections of South 7th Avenue and East Silberhorn Road and River Road and East Silberhorn Road were not adequately addressed. He also asserted that the project should include bicycle improvements along South 7th Avenue and that a three-way stop should be installed at the intersection of South 7th Avenue and East Silberhorn Road.
- Severne Johnson raised concerns about the site visit leading to Washington State Department of Fish and Wildlife (WDFW) Habitat Biologist Danielle Zitomer’s determination that the water feature on the eastern portion of the property is not a regulated watercourse and is instead a non-regulated irrigation ditch.
- Stephanie Nead reiterated concerns about the notice of the application and associated open record hearing, issues regarding the environmental review of the proposed

---

<sup>1</sup> SMC 20.01.020.P defines *parties of record* as:

the land use permit applicant, persons who have testified at an open record hearing, and any persons who have submitted written comments concerning the application that form part of the public record that is considered at the open record hearing (excluding persons who only signed petitions or mechanically produced form letters).

<sup>2</sup> Although Alma Seniuk, Steve Resende, Deborah Myers, Brenda Bigger, Bruce Shoup, Carey Birkenfel, Kathryn Lass, Kelli Phipps, Vern and Nancy McKim, and Rick Olexick and Nancy Block-Olexick are not parties of record who have standing to request reconsideration of the Hearing Examiner’s August 25, 2022, decision, the Hearing Examiner notes that he has reviewed these reconsideration requests and determines that none would warrant a correction or amendment of the decision based on “errors of procedure, errors of law or fact, errors in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing.” *SMC 2.10.100.*

development under SEPA, the density of the proposed development and its compatibility with the surrounding area, the availability of water to serve the development, WDFW Habitat Biologist Danielle Zitomer's determination with regard to the lack of regulated streams on-site. She also raised concerns that the approval of the proposed development did not consider Ms. Zitomer's observation during her post-hearing site visit that a portion of the property met a reasonable standard for high-quality habitat for elk.

- Robert Bevins similarly raised concerns about a portion of the property containing elk habitat.

### Applicant Response

On September 13, 2022, the Applicant submitted a response to the various requests for reconsideration, which asserted that the requests would not meet the standards for correcting or amending the decision under SMC 2.10.100.

### **DECISION**

Requests for reconsideration must “specifically set forth errors of procedure, errors of law or fact, errors in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing.” *SMC 2.10.100*. This process does not entail revisiting issues addressed in the Hearing Examiner's decision based on a disagreement with the Hearing Examiner's analysis or the decision's outcome absent such errors. The Hearing Examiner has reviewed the requests for reconsideration submitted by parties of record and determines that they do not identify procedural errors, legal errors, factual errors, or new evidence warranting a correction or amendment of the August 25, 2022, decision granting the Applicant's request for preliminary plat approval. Issues regarding notice of the application and associated hearing and regarding the project's traffic impacts, the environmental review of the proposal, the density of the proposal, the proposed development's compatibility with the existing character of the surrounding neighborhood, and the presence of critical areas on-site (or lack thereof) were adequately addressed in the decision.

Although the Hearing Examiner's decision did not specifically address Ms. Zitomer's observation regarding the potential presence of elk habitat on-site, the requests for reconsideration do not identify any legal error with respect to this issue. The Hearing Examiner notes in this regard that, although the City's critical areas ordinance contains provisions addressing the protection of priority habitat for endangered or threatened species, *see e.g.*, SMC 18.80.070.D, the record does not indicate that elk are an endangered or threatened species triggering these provisions. Moreover, the Hearing Examiner takes judicial notice that WDFW does not identify elk as a state-listed endangered or threatened species.<sup>3</sup> In addition, the Applicant is required by the MDNS to take all necessary steps to prevent the incidental taking of protected species through habitat modification or degradation and, at its sole expense, take all

---

<sup>3</sup> WDFW's threatened and endangered species list is available at: <https://wdfw.wa.gov/species-habitats/at-risk/listed>.

action necessary to prevent the furtherance of the damage or degradation and to restore the habitat as required by the federal, state, and local agencies with jurisdiction.

Having determined that the requests for reconsideration do not identify material errors or new evidence warranting a correction or amendment to the Hearing Examiner's August 25, 2022, decision, the Hearing Examiner confirms the original decision and **DENIES** the requests for reconsideration.

**DECIDED** this 20<sup>th</sup> day of September 2022.



---

Andrew M. Reeves  
Hearing Examiner  
Sound Law Center