

PLANNING COMMISSION RESOLUTION NO. 94-33

A RESOLUTION OF THE CITY OF MILL CREEK)
PLANNING COMMISSION, RECOMMENDING)
APPROVAL TO THE CITY COUNCIL OF THE)
CITY OF MILL CREEK, WASHINGTON OF A) FINDINGS,
PRELIMINARY PLAT/PLANNED RESIDENTIAL) REASONS AND
DEVELOPMENT FOR AN EIGHTY-EIGHT (88)) RECOMMENDATIONS
LOT RESIDENTIAL SUBDIVISION TO BE)
KNOWN AS "AMBERLEIGH." CASE FILE)
NUMBER PP 93-37.)

WHEREAS, William E. Buchan, Inc. has submitted the appropriate information to the City of Mill Creek for consideration of a Preliminary Plat/Planned Residential Development for an eighty-eight (88) lot single-family residential subdivision located south of Mill Creek Road, west of Seattle Hill Road, and east of Miller's Village, within the City of Mill Creek; and

WHEREAS, the City of Mill Creek's SEPA Official issued a Mitigated Determination of Non-Significance and Notice of Property Development Impact Mitigation, pursuant to RCW 43.21C, and Chapters 17.48 and 18.04 MCMC; and

WHEREAS, on January 9, 1994, a legal notice stating the time, place, and purpose of the public hearing was published in the Everett Herald; and on January 10, 1994, the notice was posted on the property pursuant to MCMC 17.36.040; and on January 7, 1994, the notice was sent to surrounding property owners within 500 feet of the site in accordance with MCMC 17.36.040; and

WHEREAS, the Planning Commission duly convened a public hearing on January 20, 1994, to consider the matter, took testimony, and inquired into the facts of the proposal.

WHEREAS, the Planning Commission closed the public hearing and left the written record open for additional analysis and comment; and

WHEREAS, the Planning Commission continued further deliberation on the application until February 17, 1994; and

WHEREAS, the Planning Commission reviewed the record and inquired into the facts of the proposal on February 17, 1994.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MILL CREEK:

Section 1: The Planning Commission has considered the staff report and addendum, attached as Exhibit A, and the proposed preliminary plat, attached as Exhibit B, all incorporated herein, and the testimony and other facts elicited at the public hearing and finds that the proposed preliminary plat/planned residential development is consistent with the Mill Creek Comprehensive Plan the Mill Creek Subdivision and Zoning ordinances if conditioned to make appropriate provisions for the public health, safety, and general welfare.

Section 2: The Planning Commission adopts the findings and recommendations as contained in Exhibit A, as they may be modified by the Planning Commission discussion and recommendation contained in Exhibit C, attached and incorporated herein.

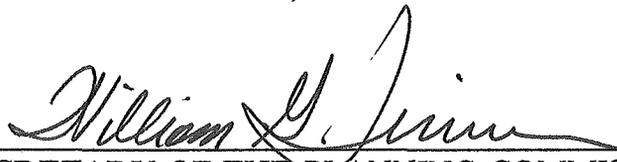
Section 3: The Planning Commission, therefore, recommends to the City Council approval of an eighty-eight (88) lot preliminary plat/planned residential development for William E. Buchan, Inc. as fully described and conditioned in Exhibit A, Exhibit B, and Exhibit C.

Done and Passed by majority vote, this seventeenth day of February, 1994.

CITY OF MILL CREEK PLANNING COMMISSION



ROBERT MCELHOSE, VICE CHAIRMAN



SECRETARY OF THE PLANNING COMMISSION

ATTACHMENT: Exhibit A - Staff Report and Addendum
Exhibit B - Preliminary Plat Map
Exhibit C - Planning Commission Motion with Conditions

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EXHIBIT A

**DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT
TO THE CITY OF MILL CREEK PLANNING COMMISSION**

PART I - SUMMARY INFORMATION

HEARING

DATE: January 20, 1994

OWNER:

William E. Buchan, Inc.
11555 Northup Way
Bellevue, Washington 98004

REPRESENTATIVE:

G.W.C.
8888 45th Place West
Mukilteo, Washington 98275

**REQUESTED
ACTION:**

Planned Residential Development/Preliminary Plat approval for an 88-lot subdivision to be developed with 78 townhouse residences and 10 single-family detached residences.

LOCATION:

The subject site is located south of Mill Creek Road, west of Seattle Hill Road, and east of the Miller's Village development within Sections 5 and 6, Township 27 North, Range 5 East, W.M. Snohomish County.

SIZE:

15.02 acres

**LEGAL
DESCRIPTION:**

Refer to Attachment 1

**COMPREHENSIVE
PLAN DESIGNATION:**

Single-Family Medium-Density, Nine (9) Dwelling Units per Acre

ZONING DISTRICT:

PRD 7200 - Planned Residential Development

PART II - STATUTORY REQUIREMENTS

SEPA COMPLIANCE/ DEVELOPMENT IMPACT MITIGATION ORDINANCE:

The City's SEPA Official has determined that this proposal does not have a probable significant adverse impact on the environment. Therefore, an environmental impact statement was not required under the provisions of RCW 43.21C.030(2)(C). The project is also subject to the provisions of Chapter 17.48 Mill Creek Municipal Code (MCMC), Development Impact Mitigation.

City staff has identified certain elements of the environment that require mitigation pursuant to SEPA as well as impacts on public facilities that require mitigation pursuant to Chapter 17.48 MCMC. On November 22, 1993 a Mitigated Determination of Non-Significance (MDNS)/Notice of Property Development was issued for the proposed project. Specific measures are required to mitigate development impacts and have been incorporated into the appropriate recommended conditions of approval.

INTERJURISDICTIONAL AGREEMENTS:

Interlocal Transportation Agreement with Snohomish County

In 1991 the City and Snohomish County signed an interlocal transportation agreement that established the policies and procedures for the review of development impacts on interjurisdictional transportation systems. Under the terms of the agreement, each jurisdiction is to: 1) notify the other of developments occurring within specific geographical areas; 2) provide special studies or information related to specific development proposals; 3) recommend specific measures to be imposed to mitigate impacts on transportation facilities in the other jurisdiction.

The Snohomish County Public Works Department has reviewed the proposed project and their comments have been incorporated into the recommended conditions of project approval.

**INTERLOCAL AGREEMENT
WITH EVERETT
SCHOOL DISTRICT:**

In March 1993 the City and the Everett School District signed an Interlocal Agreement to: 1) establish a process for the joint review of development applications in the City through the SEPA process and 2) provide a legal basis through which the City may condition development approvals to require mitigation of impacts on District facilities. This application has been reviewed by the District and their comments are reflected in the recommended findings and conditions. Please refer to Attachment 2.

NOTICE:

According to Section 17.36.040 MCMC, notice of the public hearing was mailed to property owners of record within 500 feet of the proposed project on January 7, 1994, published in the Everett Herald on January 9, 1994, and the property was posted in three places on January 10, 1994.

PART III - BACKGROUND INFORMATION

HISTORY:

The subject site is Lot 3 of the plat of Miller's Village, which has a rather complex history. The entire Miller's Village site is located in Sector 8 of the United Development Corporation (UDC) Mill Creek Planned Residential Development. Sector approval was granted by Snohomish County prior to incorporation of the City and allowed single-family attached residences (townhouses) with a maximum density of nine dwelling units per acre for the Miller's Village site.

The first plat of Miller's Village creating three large lots was approved by the county in 1981. However, construction never occurred under the auspices of the county approval. Between 1985 and 1987 the City granted preliminary plat and binding site plan approval for Miller's Village. Although a total of 85 units were approved by the City, only 69 have been constructed.

The conditions of approval by the City, for the previously approved Miller's Village projects, required the developer of the third phase to provide the final stormwater management facilities to serve the entire Miller's Village property and to construct a pocket park on Lot 3.

**EXISTING SITE
CHARACTERISTICS:**

SOILS:

Like much of the land in the City, the soils are the Alderwood series. The Soil Conservation Service (SCS) has classified the soils as Alderwood Gravelly Sandy Loam 2-5 percent slope. This soil type has slight to moderate limitations for residential development, primarily due to septic tank drain field suitability, resulting from poor drainage and seasonal wetness, and the need for foundation drainage for buildings and crawl spaces.

Information contained in the approved sector plan also indicates the presence of Everett Sandy Loam soils. The SCS indicates that this soil group is generally suited for urban development if sewers are available to prevent groundwater contamination.

Since the proposed plat will be served by public sewers, the limitation for septic tank drain fields is not applicable. The requirement for foundation drainage is made by the City Building Official at the time of construction of the future residences.

VEGETATION:

The subject site is mostly forested with evergreen and deciduous trees. The predominant species include Fir, Hemlock, Maple, Cedar and Red Alder. There is also extensive undergrowth in many places.

LAND USE:

The subject site is undeveloped. There is a small, seasonal pond located in the northwest corner that has been serving as the temporary drainage pond for the existing Miller's Village development. An old easement road also exists on the property.

Surrounding land uses are as follows:

To the east is Seattle Hill Road and east of the road is the Wildflower subdivision, which is developed with 57 single-family detached homes on lots ranging in size from approximately 4,000 to 6,500 square feet.

LAND USE CONTINUED:

To the west is the Miller's Village development containing 69 single-family attached townhouse dwelling units.

To the north is Mill Creek Road and The Pointe development containing 48 single-family attached townhouse residences.

To the south of the subject site is an undeveloped parcel that was annexed to the City in 1992 as part of the LKS Annexation. In accordance with the conditions of the annexation, this parcel includes property that will be dedicated to the City for a neighborhood park.

UTILITIES:

The subject site is located within the service area of the Alderwood Water District. An eight-inch water line is located adjacent to the subject site on Seattle Hill Road and water lines are stubbed to the site in the northwest and western portions of the site. Sewer stubs are located on the north and west property lines adjacent to Miller's Village.

These utilities are required to be constructed throughout the site and may be required to stub to the contiguous property to the south. Electrical service will be provided by Snohomish County PUD and natural gas service by Washington Natural Gas.

FIRE PROTECTION:

Fire protection, suppression and emergency medical service will be provided by Fire District No. 7.

**SUBDIVISION PROCESS
AND DESIGN:**

Process

The project proponent has applied for a preliminary plat approval under the provisions of Section 16.12 of the subdivision ordinance governing planned residential development (PRD). This is consistent with the previously developed portion of the site, which was approved as a PRD. The PRD process is intended as an alternate form of development to allow more flexibility while retaining significant natural features or providing public and private amenities.

SUBDIVISION PROCESS AND DESIGN CONTINUED:

Under this process, certain zoning and subdivision dimensional and bulk standards may be modified except for street setbacks on exterior streets, surveying standards, permitted uses, and the engineering and design standards for public improvements.

Due to the unique design of the townhouse units, the applicant has requested the following modifications as allowed by the PRD regulations:

1. Modification to the setback requirements for rear yards to accommodate structures that are attached at the rear building walls such as in the "quad" units and for structures where the dwellings abut the 50-foot cutting preserve tracts.
2. Modification to the 65 percent lot coverage requirement to allow an average lot coverage of 65 percent. This affects Lots 10, 11, 14-17, 20 and 73. The primary reason for the request is that the use of the private courts providing access to the interior garages results in more lot coverage, approximately 61-71 percent.
3. Modification to the 30-foot height limit for townhouses to allow the residences on the interior Lots 31-46, 61-71, and 79-84 to have a maximum of 32 feet. This modification would not apply to the detached units that have a height limit of 35 feet or to the units that abut Miller's Village, Mill Creek Road, or Seattle Hill Road.
4. Reduction of some front yard setbacks. The PRD 7200 zone district regulations for townhouses require a 15-foot front yard setback. The requested modification is to allow a minimum five-foot front yard setback where the front yard does not abut a public street; i.e., interior courtyard units.

SUBDIVISION PROCESS AND DESIGN CONTINUED:

Subdivision Design

General Description

The proposal is for an 88-lot preliminary plat/PRD. The subject site is approximately 15 acres in size with a density of approximately 6 units per acre.

The proposed project is best described as a cluster, townhouse subdivision, and represents a new and unique approach to single-family residential development in the City. The layout of the lots and structures departs from standard subdivision design. Unlike many single-family attached developments, the residences, rather than the garages, are the prominent feature on the lots when viewed from the street.

In many existing developments, the residences are aligned in a lineal "side-by-side" fashion. One of the unique features of the subject application is the proposed alignment of the residences with both "side-by-side" and "back-to-back" orientations creating a shared courtyard for vehicle access. The intended effect is to present a streetscape that reflects the residences, yards, and landscaping rather than one of garage doors, driveways, and cars.

Lot Layout

As mentioned above, the layout of many of the lots in the proposed plats departs from the lineal, front-loaded orientation (i.e., garages) of standard subdivision design. This is especially true for the lots located in the middle sections of the plat where the garages are set back from the street and take a secondary role to residences. These "quad" lots are arranged so that four units back up to one another and are joined at the garage walls.

In the southern portion of the plat the lots are arranged in a more traditional side-by-side manner, but again the garages will be set back from the street and the proposed residences. In the northern portion of the site there are two tiers of lots between the street and cutting preserve.

SUBDIVISION PROCESS AND DESIGN CONTINUED:

Access and Circulation

Access to the development will be from Seattle Hill Road across from the Wildflower development. The internal streets form a continuous loop system and all roads will be public. Access to the residences is from shared driveways that function as courtyards having direct access to the public streets. By moving the garage back from the street and utilizing the courtyards, this arrangement also minimizes the number of driveways along the street. For example, in the northern half of the site (lots 1-28) there are seven driveways serving 28 residences.

Pedestrian access will be provided by public sidewalks along most of the internal streets and will be connected to the public sidewalks along Mill Creek Boulevard. A pedestrian pathway is planned for Tract C linking the subject site with the property to the south, where a public neighborhood park is planned, and across Tract GH to link the interior portions of the plat with the public sidewalks on Mill Creek Road.

Utilities

Sanitary sewer and water service is currently located on the northern and western boundaries of the site. The project proponent will be required to extend the utilities throughout both divisions.

Stormwater runoff will be managed through an on-site drainage system that includes two underground detention vaults to accommodate on-site and Miller's Village Condo run-off storage. (Miller's Village existing detention facility is currently an open detention pond located on the Amberleigh site. The applicant plans to remove the system and accommodate for it in the storage design.) Water quality will be attained through biofiltering and through a two-stage solid settling system incorporated in the storage vaults. The release rate for the on-site runoff, from the detention vaults, will be in conformance with the Department of Fisheries and Department of Ecology criteria. The outfall will be into two existing drainage channels.

SUBDIVISION PROCESS AND DESIGN CONTINUED:

Open Space

In accordance with the findings and conclusions of the previous approvals for the Miller's Village project, the balance of open space needed to satisfy the original 20 percent PRD requirement for the entire project was 24,000 square feet (.55 acre). The proposed plat contains approximately 3.7 acres of open space (24 percent of the subject site area) within: 1) fifty-foot cutting preserves located on the north, south, and east sides of the project site; and 2) a .42 acre pocket park located near the entry to the project. Additional open space is also provided in the private yards, however, the precise amount has not been calculated.

CONSISTENCY WITH THE MILL CREEK COMPREHENSIVE PLAN:

The proposed plat has been reviewed for consistency with the Mill Creek Comprehensive Plan. Since the plan is by its nature "comprehensive" or a broad policy document, staff has focused on the applicable policies that either have direct influence on the design of this project or are geographically specific to the request. In this section, the development policies are summarized with a brief response regarding the project relationship to the policy.

LAND USE ELEMENT

Policies 1.01 and 1.02 - Regarding a range of residential densities and continued implementation of the original Mill Creek master plan where appropriate or applicable. The proposed project is located within Sector 8 of the original Mill Creek master plan. Through the sector approval process the subject site was designated for single-family attached/townhouse development. This designation is reflected in the City's Comprehensive Plan designation of medium-density residential [nine (9) dwelling units per acre].

**CONSISTENCY WITH THE MILL CREEK
COMPREHENSIVE PLAN CONTINUED:**

Policy 1.03 - Continuation of residential development patterns.

The proposed plat continues the existing residential development patterns in the City, since it provides medium-density residential development in an area that is characterized by similar types of development at similar densities; i.e., attached residential at densities of 6 - 7 dwelling units per acre or single-family detached homes on 4,000 - 5,000 square foot lots.

Policy 1.13 - Access to new development by collector or arterial streets. Access to the subject site is from Seattle Hill Road, which is designated as a collector street in the Transportation Element of the plan. One access is proposed and the internal streets of the proposed development do not connect with existing developments.

Policy 1.14 - Directs the provision of landscaped buffers and greenways along arterials. The proposed plat includes fifty-foot (50') cutting preserves along Mill Creek Road and Seattle Hill Road. The width of the proposed buffer is consistent with the Streetscape Element of the Comprehensive Plan; however, enhancement with additional landscaping in places may be required.

Policy 1.15 - Peripheral buffers around residential developments to define the development. In addition to the cutting preserves, adjacent to the two fronting public streets, the proposed plat also incorporates other buffers in the form of landscaping tracts on the west side of the site adjacent to Miller's Village and a 50-foot cutting preserve along the entire south boundary of the site.

Policy 1.16 - New developments are to be planned as identifiable neighborhoods. While the subject site was originally planned to be developed as part of Miller's Village, the current proposal will create a new identifiable neighborhood. The proposed lot and building layout, which departs from the existing medium-density development patterns and should establish the project as a unique new neighborhood. There is

**CONSISTENCY WITH THE MILL CREEK
COMPREHENSIVE PLAN CONTINUED:**

a single access point and the project contains private open space to serve its residents.

Policy 1.17 - Compatibility with adjacent developments. The proposed plat is similar to the adjacent developments of Miller's Village and The Pointe since both areas have the same zoning, PRD 7200, the densities are similar and the existing and proposed residences will be townhouse style units.

COMMUNITY FACILITIES AND UTILITIES ELEMENT

Policies 1.01, 1.02 & 1.03 - Sewer and water availability, capacity and cost of service. The subject site can be served by public water and sewer. The Alderwood Water District has indicated that there is sufficient capacity to serve this development and the developer will be responsible for construction of all lines necessary to serve the site.

Policy 4.01 - Stormwater management - protecting water quality. Although the final engineering designs for the stormwater system are not normally reviewed at this juncture, the SEPA requirements require compliance with the Department of Ecology Stormwater Manuals, designed to protect water quality. In addition, the preliminary design incorporates a detention facility for settling and grass-lined biofiltration ditches. In addition, the City Engineer will require that off-site drainage complies with the Washington State Department of Fisheries standards for stream protection.

Policy 6.01 - School mitigation. The Everett School District has requested payment of fees in lieu of land dedication to mitigate impacts on the District's facilities.

TRANSPORTATION ELEMENT

Policies 2.01 & 2.02 - Pedestrian and bicycle travel, location of facilities. Public sidewalks will be provided along the internal streets; however, the applicants have proposed that they not be constructed on both sides of all streets. In addition, pedestrian pathways linking the interior public sidewalk system with the

CONSISTENCY WITH THE MILL CREEK COMPREHENSIVE PLAN CONTINUED:

public sidewalks and public park along Mill Creek Road and the property to the south are also proposed. The internal sidewalks will also connect with sidewalks to be constructed along Seattle Hill Road.

ROADWAY CAPACITY POLICIES

Policy 3.01 - Traffic impacts. The proposed project does not introduce traffic into any existing residential divisions. While full frontage improvements have been constructed along both Mill Creek Road and Seattle Hill Road, with the exception of sidewalks), the applicant will be responsible for mitigating proportionate share impacts on the City road system for those projects adopted as part of the current capital facilities program.

Policy 3.03 - Roadway access. Access to the site is from a collector street, Seattle Hill Road. The access for the site has been evaluated and found to be acceptable with regard to sight distance and alignment with the access to the Wildflower development.

TRANSIT POLICIES

Policies 4.01 & 4.03 - Location of transit facilities and transit friendly land developments. The proposed project incorporates pedestrian pathways from the interior portions of the plat to Seattle Hill Road and Mill Creek Road. There are two bus stops located along Mill Creek Road. One is located across from the subject site in front of The Pointe and the other is located adjacent to the Wildflower division.

STREETSCAPE ELEMENT

Polices 1.02, 3.01 & 3.02 - Location and width of landscape buffers/cutting preserves. The proposed project has frontage on Mill Creek Road, which is subject to the streetscape standards of the plan. Consistent with those standards, a fifty-foot (50') roadway buffer/cutting preserve has been incorporated in the

**CONSISTENCY WITH THE MILL CREEK
COMPREHENSIVE PLAN CONTINUED:**

project design. In addition there is a fifty-foot cutting preserve along Seattle Hill Road.

The applicants have requested permission to thin and remove many of the alder trees in the cutting preserve along Mill Creek Road. During the environmental review, staff concluded this may be permitted and that portions of the cutting preserve shall be reforested to provide more species diversity and habitat.

ENVIRONMENTAL FEATURES ELEMENT

Environmental Policies 1.02 & 1.03 - Control and treatment of stormwater runoff. The project applicant will be required to provide stormwater runoff facilities that provide both detention, controlled release and water quality treatment through the use of particulate settling, biofiltration, and oil/water separators.

Aesthetic Value Policies 4.02, 4.03, 4.05 & 4.06 - Preservation of natural vegetation. The proposed plat will result in the removal of a significant amount of native vegetation. As mentioned above, the design incorporates roadway buffers/cutting preserves and property buffers in an effort to maintain some existing stands of trees and native vegetation. There should also be an opportunity to save trees on some of the lots and on the pocket park site.

PARKS AND OPENS SPACE ELEMENT

Policy 1.02 - Linking public and private trail systems. As mentioned previously, the design of the proposed plat includes an open space tract that can accommodate pedestrian pathways, linking the subject plat with the City sidewalk system, and adjacent property to provide convenient non-motorized access to the future neighborhood park.

Policy 5.02 - Mitigation of development impacts on park facilities. The subject site is contiguous with an area identified in the Comprehensive Plan as a neighborhood park site. Dedication of a neighborhood park site was a condition of annexation of the LKS property located directly south of the

**CONSISTENCY WITH THE MILL CREEK
COMPREHENSIVE PLAN CONTINUED:**

subject site. Thus, staff has determined that the payment of proportionate share mitigation, consistent with adopted formulas, is required to mitigate the impacts of this residential development. The mitigation will be used for development of the park.

Policy 5.03 - A well dispersed system of mini-parks to be located in residential areas. The proposed development contains a .42 acre pocket park intended for passive recreation. This is proposed as a private facility for the use of the residents of the plat.

In summary, staff has reviewed the applicable policies of the Comprehensive Plan. Based on this review, we find that the proposed project complies with the applicable policies or that the policies provide further direction in the development of the conditions of approval.

**CONSISTENCY WITH
SUBDIVISION
REGULATIONS:**

The subdivision of property in the City is governed by Title 16 MCMC. This application is also being processed under the provisions of the planned area development section of the subdivision regulations (Chapter 16.12), which allows modification of zoning and subdivision requirements with certain limitations and conditions. The following section evaluates the proposed plat with the criteria for reviewing and approving preliminary plats that are found in MCMC Sections 16.12 and 16.18.010(c).

Since the proposal is a planned residential development, it has been evaluated consistent with the following provisions of Chapter 16.12 MCMC - Planned Area Development.

CONSISTENCY WITH SUBDIVISION REGULATIONS CONTINUED:

Subdivision Review Criteria

1. The preliminary subdivision and binding site plan meets the requirements and intent of the MCMC and adopted City plans.

Comment:

The gross density that is allowed for the development of single-family attached homes as designated on the Land Use Map of the Comprehensive Plan, is nine (9) units per acre. The gross density of the proposed plat, is 5.6 units per acre. This density is compatible with the density of the adjacent development in Miller's Village and The Pointe. The minimum lot size for townhouses located in the PRD 7200 zone district is an average of 2000 square feet. The average lot area of the proposed project is 4,889 square feet. The minimum lot size for single-family detached residences is 5,000 square feet. Nine lots are proposed for single-family detached residences and all nine lots meets the minimum lot area.

2. The proposed plat makes adequate provisions for open space, drainage ways, streets and other public ways, water supply, sanitary wastes, parks, playgrounds, sites for schools, and school grounds.

Comment:

The streets and pedestrian ways within the proposed development will be required to comply with the standards required by the City Engineer. Open space will be provided through the roadway buffers/cutting preserves and the private pocket park located on Tract J. The applicants will mitigate public recreational impacts through the payment of park impact fees to be used for development of the neighborhood park on the adjacent property to the south. Utilities are available with sufficient capacity to serve the site and the final drainage plans will be reviewed for adequacy in managing projected off-site flows. Contributions will be required to mitigate proportionate share impacts on City streets.

CONSISTENCY WITH SUBDIVISION REGULATIONS CONTINUED:

In addition to mitigating impacts on public facilities within the City, the applicant will also contribute proportionate share impact mitigation to Snohomish County for road and transportation impacts and to the Everett School District for impacts on the school facilities.

3. The subdivision or development is beneficial to the public health, safety, and welfare and is in the public interest.

Comment:

The execution of mitigation agreements with the proponent will include mitigation funding for neighborhood park development, and improvements to the City road system. In addition, the applicant will grant a pedestrian access easement to the contiguous property to the south through the existing cutting preserves to allow pedestrian access from the public right-of-way in the plat to the future public park to be developed on the LKS site.

4. Section 16.12.030, requires that a planned residential development must be located on a minimum lot size of 4.9 acres.

Comment:

The subject site contains 15.02 acres.

5. Section 16.12.040, directs that certain bulk regulations may be modified in a planned residential development.

Comment:

The requested modifications include elimination of the rear yard requirements of the PRD 7200 zone district, reduction of the front yard requirements, modification of the lot coverage requirement for ten lots and modification of the 30-foot height limit for townhouse dwellings. These requested modifications are consistent with those allowed under said section.

CONSISTENCY WITH SUBDIVISION REGULATIONS CONTINUED:

Due to the design of the units, many of the proposed buildings will not have frontage on a public street or private roads, thereby making classification of the front yard difficult.

As mentioned above strict application of the PRD 7200 setback regulations could preclude certain beneficial and creative aspects of this proposal. Through the requested modifications there is more flexibility in the design and layout of the residences.

6. Section 16.12.050, indicates that the number of dwelling units in a PRD may be 120 percent of the permitted density of the zone district. This section also establishes a formula for computing the allowable density determined by establishing a net development area that accounts for the unbuildable lands and the internal road systems.

Comment:

Both the Comprehensive Plan designation and zoning allow nine (9) dwelling units per acre on the subject site. The proposed development density is less than allowed. However, the City does not currently require that the property be developed to maximum allowable density.

7. Section 16.12.060, directs that 20 percent of the net development area in a PRD must be established as open space and the public streets within the plat and along Seattle Hill Road.

Comment:

In summary, the proposed application is consistent or can be conditioned to be consistent with the applicable policies of the Mill Creek Comprehensive Plan. The proposed plat contains approximately 3.7 acres of open space, which is approximately 24 percent of the subject site. The size of the pocket park is approximately .42 acres with, the balance of the open space located in the cutting preserves and landscape tracts.

**FINDINGS AND
CONCLUSIONS:**

Having viewed the property and reviewed the application and supporting materials, staff makes the following finds and conclusions:

1. The request is for the approval of a preliminary plat / planned residential development for 88 lots to be developed with 78 townhouse residences and 10 single-family detached residences.
2. Access to the proposed plat would be from Seattle Hill Road, a collector street.
3. The subject site is located in Sector 8 of United Development Corporation's Mill Creek Planned Residential Development. The sector plan, approved in 1981, designates the area as single-family attached with a maximum density of nine (9) dwelling units per acre.
4. The subject site is located on Lot 3 of the plat of Miller's Village, approved by the City in 1987.
5. The subject site is designated Residential Single-Family Medium-Density [nine (9) dwelling units per acre] in the Mill Creek Comprehensive Plan.
6. The density of the proposed project is 5.86 units per acre.
7. In accordance with the previous approval for the Miller's Village development, the developer of Lot 3 is responsible for providing permanent stormwater management facilities for the existing Miller's Village development.
8. The proposed plat is located with a PRD 7200 Zone District. By using the Planned Residential Development process the applicant has requested that the setback, height, lot width and lot coverage requirements be modified. The requested modifications do not apply to all lots in the proposed plat.
9. The proposed project, has been reviewed under the provisions of the State Environmental Policy Act (SEPA) and Chapter 17.48 MCMC, the Development Impact Mitigation Ordinance. This review has revealed that there will be an

FINDINGS AND CONCLUSIONS CONTINUED:

impact on the City street system, parks, and public school facilities that require mitigation.

In accordance with the Mitigated Determination of Non-Significance and Notice of Property Development Impact Mitigation issued by the responsible official on November 22, 1993, impact mitigation agreement will be required to mitigate the identified impacts.

10. The proposed plat is also subject to an Interlocal Transportation Agreement between the City of Mill Creek and Snohomish County for the review and mitigation of development impacts on the county road system.

11. The City has received Snohomish County's comments pursuant to the Interlocal Transportation Agreement and SEPA, along with a request for the requirement of contributions to mitigate the specific impacts occurring from this development.

12. In 1993 the City of Mill Creek and the Everett School District signed in Interlocal Agreement for the joint review of development proposals and providing the legal basis for appropriate conditions to mitigate development impacts on school facilities.

13. In accordance with the Interlocal Agreement, the Everett School District, as co-lead agency, has requested that the applicant contribute fees in lieu of land dedication to mitigate the development impacts on District facilities.

14. The plat as described conforms to the provisions of the planned residential use, density, open space, and property buffers that exist in adjacent developments.

15. The proposed plat is compatible with regard to the type of residential use, density, open space, and property buffers that exist in adjacent developments.

16. The proposed plat has been reviewed and found consistent with the applicable policies and Land Use Map of the City of Mill Creek Comprehensive Plan.

FINDINGS AND CONCLUSIONS CONTINUED:

17. The proposed plat can be served by public sewer and water, and makes appropriate provisions for streets, drainage facilities, open space, parks and playgrounds, sidewalk and public ways.

18. If approved, subject to the conditions recommended below, the proposed plat will be consistent with the requirements of Title 16 MCMC, Plats and Subdivisions.

19. The statutory requirement for environmental review and public notification have been duly satisfied.

RECOMMENDATIONS: Based on the foregoing information, findings and conclusions, staff recommends to the Planning Commission approval of the proposed preliminary plat / planned residential development subject to the following conditions:

1. Development shall occur as portrayed on the preliminary plat map attached as Exhibit B, except as may be modified by conditions imposed by the Planning Commission.
2. The maximum number of building lots shall be 88. Construction shall be limited to the building locations as portrayed on Exhibit B.
3. The maximum allowable height of individual dwelling units on Lots 31-46, 61-71, and 79-84 shall be 32 feet.
4. The front yard setback of lots not abutting a public street may be reduced to five (5) feet.
5. With the exception of lots 10, 11, 14 - 17, 20, and 73, lot coverage shall not exceed 65 percent.
6. Water and sewer facilities shall be designed and installed in accordance with the requirements of the Alderwood Water District.
7. Stormwater management plans shall be submitted for review and approval by the City Engineer. The plans shall be prepared by a licensed engineer and incorporate stormwater

RECOMMENDATIONS CONTINUED:

treatment methods based on the Washington State Department of Ecology Stormwater Management Manual, Publication 92-32, Volume I and Publication 92-33, Volume II.

8. Standard sidewalks are required on both sides of the public streets within the plat and along Seattle Hill Road.

9. All roadway sections shall be designed by a licensed engineer and the design reviewed and approved by the City Engineer.

10. In accordance with the Interlocal Transportation Agreement between Snohomish County and the City of Mill Creek for the mitigation of interjurisdictional development impacts, the applicant shall contribute \$ 66,938.00 to Snohomish County, subject to any credits approved by the county. Verification of payment shall be provided to the City before final plat approval.

11. Appropriate mitigation to the Everett School District based on consultations between the developer and the District. Verification of payment shall be provided to the City before final plat approval.

12. The execution of an impact mitigation agreement between the applicant and the City for \$ 39,041.00 for the following road improvement projects:

Seattle Hill Road Improvements - \$ 24,549.00
Traffic Signal at 23rd/25th Avenue - \$ 6,097.00
9th Avenue Intersection Improvements - \$ 3,350.00
164th Street Bridge Widening - Phase II - \$ 3,825.00
Dumas Road Improvements - \$ 1,220.00

Payment shall be made prior to final plat approval.

13. Contribution of \$ 50,423.00 to mitigate impacts on City park and recreation facilities. Of this amount, \$ 43,736.00 shall be used for the development of a neighborhood park on the property immediately south of the subject site. The balance of the mitigation, \$ 6,687.00 shall be used for the acquisition and development of a Community Park.

RECOMMENDATIONS CONTINUED:

14. Contribution of \$114,664 to the Everett School District in lieu of any dedication of land for additional school facilities. Verification of payment by the District is required prior to final approval.
15. Submittal and approval of a street tree planting plan for all streets within the plat. The street tree plan shall be prepared by a licensed landscape architect prior to final plat approval. The plan shall be implemented commensurate with house construction.
16. Submittal and approval of a supplemental reforestation and habitat enhancement plan for the cutting preserve adjacent to Mill Creek Road. The plan shall be implemented prior to final plat approval.
17. Design Review Board approval of the reforestation plan; common area landscape plans; entry signs and landscaping; pocket park landscaping; and townhouse building colors, material composition, and design.
18. Individual trees or stands of trees shall be preserved within the interior portion of the plat. Trees to be preserved shall be determined after a review of the tree survey on file with the City and on-site identification by City staff and the applicant. Preservation areas and individual trees identified to be saved shall be protected from encroachment by vehicles, earth moving and excavating machinery, and material storage by the erection of barrier fencing approved by City staff. Failure to maintain, or removal of the fencing without approval of the City, shall result in the issuance of a stop work order.
19. Site clearing and grading shall be restricted to areas specified by City staff. No other clearing is allowed without the approval of City staff.
20. Trees designated for preservation that are damaged or removed shall be replaced at a ratio of 3:1. The replacement trees shall be a coniferous species and have a minimum height at planting of twelve feet. In addition, a penalty of \$1,000.00 per tree may be assessed for any trees that are removed or

RECOMMENDATIONS CONTINUED:

destroyed by the applicant or his agent without the express approval of the City. The City may, at its discretion, issue a stop work order for the construction on the subject lots until the penalty is paid.

21. Fire hydrant design, location and spacing shall be reviewed and approved by Fire District No. 7 and the Alderwood Water District.

22. Mail boxes shall be grouped or clustered in locations identified by the United States Postal Service.

23. All fireplaces shall be natural gas appliances or pellet stoves or certified wood stoves shall be used in place of fireplace inserts.

24. All utility, stormwater, drainage, maintenance easements, property buffers and public pedestrian easements together with attendant restrictions and conditions shall be portrayed on the face of the final plat.

25. There shall be a homeowners' association that will be responsible for the maintenance of all common tracts and privately owned facilities including the pocket park (Tract J), and the landscape islands and medians.

26. Minor amendments to the project may be administratively approved by the Director of Community Development upon written request by the developer. Minor amendments are those which may affect the precise dimensions or locations of buildings and driveways but do not affect the overall project character, number of buildings, density and quality and amount of open space and landscaping.

PLANNING COMMISSION

ACTION:

January 20, 1994 the Mill Creek Planning Commission held a public hearing on the preliminary plat application by William E. Buchan, Inc. After reviewing the staff report and recommendation and taking public testimony the Commission voted to continue action on the application until February 17, 1994. At the regular Commission meeting on February 17,

PLANNING COMMISSION ACTION CONTINUED:

1994, the Commission reviewed the addendum to the staff report, discussed the issues and plat design, and voted to recommend to the Council City approval of the preliminary plat of Amberleigh, subject to the following changes and additions.

Delete Condition 11. Appropriate mitigation to the Everett School District based on consultations between the developer and the District. Verification of payment shall be provided to the City prior to final plat approval.

Amend Condition 12. The execution of an impact mitigation agreement between the applicant and the City for ~~\$39,041.00~~ ~~\$38,012.00~~ for the following road improvement projects:

Seattle Hill Road Improvements- ~~\$-24,549.00~~ ~~\$23,520.00~~
Traffic Signal at 23rd/25th Ave.- \$6,097.00
9th Avenue Intersection Improvements- \$3,350.00
164th Street Bridge Widening, Phase II- \$ 3,825.00
Dumas Road Improvements- \$ 1,220.00

Payment shall be made prior to final plat approval.

Amend Condition 14. Contribution of ~~\$114,664.00-~~ ~~\$54,394.00~~ to the Everett School District in lieu of land for additional school facilities. Verification of payment by ~~to~~ the District is required prior to final plat approval.

Add New Condition 27. The pathway in Tract GH providing pedestrian access from Mill Creek Road to the interior of the plat shall be relocated to run from Mill Creek Road south through Tract E to the easement running east between lots 18, 19 and 20 on the north and lots 21 and 22 on the south and shall be subject to an easement for public pedestrian access.

Add New Condition 28. The pathway connecting 16th Place S.E. and 17th Place S.E. shall be subject to an easement for public pedestrian access.

w:\data\plan\wp\pete\amstf

PARCEL A:

Lot 3, MILLERS VILLAGE, according to the plat thereof recorded in Volume 46 of Plats, page 162 through 164, in Snohomish County, Washington;
EXCEPT portion lying within Millers Village 2 and 3, binding site plan recorded May 20, 1987 under Recording Number 8705205001.

PARCEL B:

That portion of Lot 3 of the Plat of Miller's Village as recorded in Volume 46 of Plats, pages 162 through 164, in Snohomish County, Washington, described as follows:

Commencing at the southwest corner of said Lot 3;
thence along the west line of said lot the following courses and distances;
thence north $01^{\circ}15'54''$ east 100.00 feet;
thence north $32^{\circ}57'43''$ east 438.83 feet;
thence north $09^{\circ}29'02''$ east 132.89 feet to the north line of said lot;
thence along the north line of said lot the following courses and distances:
thence south $80^{\circ}30'58''$ east 112.32 feet;
thence south $10^{\circ}21'41''$ west 84.13 feet;
thence south $80^{\circ}17'00''$ east 96.33 feet to a point of tangency with a 337.50 foot radius circular curve to the left;
thence easterly, along said curve, through a central angle of $06^{\circ}35'00''$, an arc distance of 38.78 feet to the true point of beginning;
thence continuing along said curve, from which the center bears north $03^{\circ}08'00''$ east, through a central angle of $03^{\circ}33'00''$, an arc distance of 20.91 feet;
thence north $89^{\circ}35'00''$ east 76.99 feet to a point of tangency with a 587.50 foot radius circular curve to the right;
thence easterly, along said curve, through a central angle of $06^{\circ}20'00''$, an arc distance of 64.94 feet;
thence south $84^{\circ}25'00''$ east 125.29 feet;
thence south $01^{\circ}02'06''$ east, leaving said north line, 322.76 feet;
thence north $88^{\circ}44'06''$ west, parallel with the south line of said lot, 288.80 feet to a point of tangency with a 64.00 foot radius circular curve to the right;
thence westerly, along said curve, through a central angle of $29^{\circ}51'27''$ an arc distance of 33.35 feet;
thence north $58^{\circ}52'39''$ west 58.05 feet;
thence north $22^{\circ}00'00''$ east 187.96 feet;
thence north $03^{\circ}08'00''$ east 119.00 feet to the true point of beginning;

(ALSO KNOWN AS Lot 3 of Binding Site Plan recorded May 20, 1987 under Recording Number 8705205001.)



EVERETT SCHOOL DISTRICT NO. 2

Educational Service Center

BOX 2098 • 4730 COLBY AVENUE • EVERETT, WASHINGTON 98203 • (206) 339-4200

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Superintendent

January 10, 1994

Mr. Pete Friedman
Senior Planner
City of Mill Creek
15782 Mill Creek Boulevard
Mill Creek, WA 98012

RECEIVED

JAN 10 1994

CITY OF MILL CREEK

Re: School Impact Mitigation-Preliminary Plat
Application PP93-37, Amberleigh

Dear Mr. Friedman:

WAC 197-11-360 provides that "(i) f the responsible official determines that a proposal may have a probable significant adverse environmental impact, the responsible official shall prepare and issue a determination of significance (DS) substantially in the form provided in 197-11-980."

The District's two previous letters (James W. Langus, November 30, 1993 and Michael Gunn, December 29, 1993) describe, consistent with Section 1.2 of the Interlocal Agreement between Everett School District No. 2 and the City of Mill Creek, a condition which, if imposed upon the developer, makes it unlikely that the Amberleigh development proposal will significantly and adversely affect schools of our district. Specifically, the District has recommended that the City impose the following condition on the Amberleigh plat proposal:

To mitigate the potential that the Amberleigh proposal will have significant, adverse impacts on local schools, to provide for safe and adequate schools in the area around the Amberleigh proposal, and in lieu of any dedication of land for additional school facilities, the developer shall voluntarily agree to pay to the District \$114,664.

The Amberleigh proposal will create an additional 88 single family dwelling lots in an area currently served by Cedar Wood Elementary School, Heatherwood Middle School and Cascade High School. Our studies predict that the development will add 24.6 elementary school students, 8.6 middle school students and 7.3 high school students to our schools.

"...where students thrive in a changing world."

LEADERSHIP THROUGH ACTION

Attachment 2

EVERETT SCHOOL DISTRICT NO. 2
LETTER REGARDING IMPACT MITIGATION

Mr. Pete Friedman
January 10, 1994
Page 2

All three of these schools are currently over capacity. The deficiency at Cascade High School will be remedied upon the opening of the new Jackson High School in September 1994. Therefore, we anticipate no adverse impact to Cascade High School as a direct result of the proposed development.

However, the same is not true for our middle and elementary schools. As of December 1993, Heatherwood Middle School was 139 students over capacity. Even when our new Middle School No. 5 opens in September 1994, we project a 384 middle school student capacity deficiency distributed throughout our middle school system. Cedar Wood is also over capacity as of December 1993 and will remain over capacity until new elementary school facilities are built. Any students from Amberleigh will be added to middle and elementary schools already over capacity. Thus, the proposed development would directly impact these schools, and require additional students to be housed in portable buildings until new permanent facilities can be constructed.

The District has determined, in accordance with its December 1992 facilities needs report (copy attached)¹, that to serve the additional elementary and middle schools students projected from the Amberleigh proposal (and other growth anticipated for our service area), the District will require additional school facilities. Without such facilities, the cumulative impacts of continued growth (e.g., Amberleigh and other projects) will continue to significantly and adversely effect our schools. The facilities need report determined that single family units (including mobile homes) can be properly mitigated by a developer payment per single family unit of \$1,303.²

As I indicated in my letter of December 29, 1993, we understand that the developer has suggested that its development may add an unspecified but much smaller number of children to our student population. The developer's claims could be studied (and perhaps supported or confirmed) in an environmental impact statement. Such a report might identify aspects of the developer's town home design or marketing plan, or other factors, that could result in fewer children living in

¹ We recently updated the information in this report for Snohomish County. Based on that updated information, requested mitigation from future plats in Mill Creek may be expected to increase modestly.

² Duplexes, triplexes and four-plexes, per our studies, contribute more students per unit and require a \$1,863 per unit impact fee for appropriate mitigation. The District has consistently treated individually owned single family residential town homes as appropriately within the single family designation and requested the lower \$1,303 per unit impact fee.

Mr. Pete Friedman
January 10, 1994
Page 3

its projects. If, based on such a study, it appears that the developer's specific proposal would contribute fewer students to our schools than those anticipated by the facilities need report, then it would be appropriate to discuss reduced mitigation payments. However, to confidently determine that the Amberleigh proposal is not likely to be a cause of significant, adverse impacts to our schools without a detailed, project-specific study, we are relying on the 1992 facilities needs report and have determined that a voluntary payment from the developer of \$1,303 per single family residential unit is necessary, and would be sufficient.

Sincerely,



Michael Gunn
Director of Facilities and Planning

Attachment: Everett School District
1992 Facilities Needs Report

MG/js

**DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT ADDENDUM
PRELIMINARY PLAT APPLICATION 93-37, AMBERLEIGH**

On January 20, 1994, the Planning Commission held a public hearing on the application for preliminary plat approval by William E. Buchan, Inc. After taking public testimony, the Commission voted to close the public hearing, but kept the written record open for 10 days to allow additional analysis and comment and continued until further deliberations and a decision until February 17, 1994.

Two specific issues were raised during the public testimony and two additional Commission concerns were conveyed to staff at the meeting. The issues raised during the public hearing were:

- 1) The impact of the development on the Everett School District Facilities and the appropriate level of mitigation; and
- 2) The MCCA Board of Directors position opposing the requirement for public access easements across the two pedestrian tracts.

The two additional concerns were the adequacy of off-street parking and fire department access to the units that are served by the longer driveways (primarily lots 13-20 and 49-53).

Schools

Response:

Following the public hearing on January 20, 1994, staff arranged for representatives of the school district and the applicant to meet to in an attempt to arrive at the "appropriate mitigation fee" as required in the Mitigated Determination of Nonsignificance (MDNS). As a result of the meeting between the applicant the school district, in accordance with the conditions of the MDNS, the appropriate mitigation contribution has been determined. thus, recommended condition 11 should be deleted and recommended condition 14 should be revised to read: **Contribution of \$54,394.00 to the Everett School District in lieu of any dedication of land for additional school facilities. Verification of payment by the District is required prior to final plat approval.** Since the MDNS was not appealed, the City's SEPA provisions have been satisfied.

Pedestrian Trails

As the Commission is aware, the proposed plat contains two (2) tracts, C and GH that are intended to provide pedestrian access from public sidewalks, to other public sidewalks, and to the future public park to be developed on the LKS property south of the subject site. The tracts would remain in private ownership (Amberleigh Homeowners Assoc.) with public access easements.

At the public hearing, the Commission received a letter from the MCCA opposing the provision of public access easements. The letter contained four reasons opposing the public access easements:

- 1) The requirement for the public access easement constitutes a "taking" since in the Association's opinion the easement is a physical invasion of private property;
- 2) The requirement conflicts with the original rezone contract for the Mill Creek PRD which restricting the use of the open spaces in the PRD to PRD residents;
- 3) The public use of the two trails will increase maintenance costs to property owners, compromises security service, reduces the value of the MCCA private trail system and may set a precedent for the remaining five (5) tracts owned by UDC that the association will have common area maintenance and covenants enforcement responsibility; and
- 4) The purpose of the MCCA is to protect desirability of members' property and allowing pedestrian access may expose the association to legal action for failing to protest the public access requirements and the issue in this case is similar to Mill Creek 20.

Response:

The City's physical development form has grown and evolved from a single development with private open spaces to a larger community comprised of a number of individual developments and a growing network of public facilities including sidewalks and parks. As the City has evolved so have the ideas and concerns regarding pedestrian circulation, public access and linking the community with public facilities. This is articulated in the Comprehensive Plan, **Transportation Policy #2.01** and has been implemented in the Parkside, Springs, Sunrise, and Parks subdivisions. Consistent with the Comprehensive Plan and past development approvals staff has recommended that public access easements be provided over the pedestrian trail tracts in the Amberleigh development.

Staff Report Addendum

Page 3

The issues in this case differ from the issue in Mill Creek 20 for the following reasons:

- The two pathways are not physically or functionally connected to the private trail system owned and maintained by the MCCA.
- The public access easements are parcel specific, isolated to the two tracts in the Amberleigh plat. It is not logical to conclude that allowing public access across these two tracts somehow implies allowing public access to the nature preserve or other portions of the MCCA trail system.
- The Amberleigh Homeowners Association, not MCCA, will be responsible for maintenance to all private facilities including the pocket park, landscaping tracts and the pedestrian pathways.
- The pathways will link the existing public sidewalks on Mill Creek Road with public sidewalks on the interior of the proposed plat. In the case of Mill Creek 20, the pathway ended at the property line and connection with public sidewalks was anticipated but no development had been proposed. In addition, the City has a commitment for the park land on the property to the south of the subject site and funds for park development have been identified in the City's Capital Facilities Plan. The trails are intended to link the public sidewalk system with the future park.

Please refer to the attached correspondence from the City Attorney regarding the implied legal issues.

Fire protection

Staff has received a question regarding the ability of the fire department to adequately reach all units in the proposed plat, especially those located in the northwest corner (lots 11- 20) and in the southwest corner (lots 49-53).

Response:

The proposed plat has been reviewed with fire district staff. They stated that they can adequately serve all of the residences in the proposed plat; however, they did request to be consulted on hydrant location. Particularly, they have recommended that hydrants be provided on some of the interior courtyards. Recommended condition 21 addresses this matter. Please refer to the attached letter from Fire District No. 7.

Off- Street Parking

Response:

Section 17.22.150 C. MCMC requires two (2) off-street parking spaces per unit for single family and townhouse units. The design of the proposed plat provides a total of four (4) spaces per dwelling unit [two (2) spaces in each garage and two (2) spaces in the driveway for each unit]. Also, consistent with many other neighborhoods in the City, parking will be allowed on one side of the street on all streets in the plat.

w:\data\plan\wpl\petela\mresp



WILLIAM E. BUCHAN INCORPORATED

February 22, 1994

Mr. Bill Trimm
CITY OF MILL CREEK
15728 Mill Creek Rd.
Mill Creek, WA 98012

RE: Plat of Amberleigh - Planning Commission Decision

Dear Mr. Trimm:

I have reviewed the Planning Commission's Resolution and the approved recommendation's issued by the Planning Commission on the Amberleigh Plat, your file number PP93-937.

After review of the final recommendation's of the Commission, we feel that there is no need to challenge or appeal the decision of the Planning Commission and request that you forward the preliminary plat to the City Council for their consent and approval. This is not to say that we are in total agreement with all of the recommendations, however, we feel that the recommendations were fair and attainable, and it would not be prudent to delay the approval process of the project further with any appeal.

Thank you for your help and if you have any questions, please do not hesitate to give me a call at (206)828-6424.

Best regards,

GREG NELSON

Greg Nelson
Director of Land Development

GN/lrs



EVERETT SCHOOL DISTRICT NO. 2

Educational Service Center

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Superintendent

February 10, 1994

Bill Trimm
Director of Community Development
City of Mill Creek
15728 Mill Creek Blvd.
Mill Creek, WA 98012

RECEIVED

FEB 11 1994

CITY OF MILL CREEK

RE: School Impact Mitigation, Preliminary Plat Application
PP-93-37, Amberleigh

Dear Bill:

This letter is formal notification that the Everett School District has reached agreement with William E. Buchan, Inc., on the amount of school mitigation required for the residential plat of Amberleigh.

The total amount for school mitigation by the Everett School District on this project is \$54,394.00. The amount represents \$1,303.00 per unit for ten (10) single family detached units and an adjusted single family per unit amount for the seventy-eight (78) four-unit cluster development that comprises the rest of the project.

We would request payment of the \$54,394.00 school mitigation fee prior to and as a condition of final plat approval for this project by the City of Mill Creek.

Thank you for your cooperation in resolving this matter.

Sincerely,

Michael T. Gunn
Director Facilities and Planning

:jt



W I L L I A M E . B U C H A N I N C O R P O R A T E D

February 11, 1994

Mr. Bill Trimm
CITY OF MILL CREEK
15728 Mill Creek Blvd.
Mill Creek, WA 98012

Dear Mr. Trimm:

We are in agreement of the negotiated amount of \$54,394.00 for mitigation fees with the Everett School District.

We understand however, that this amount is on a per unit basis. If less then 88 units, are approved upon final plat, the fee would be adjusted accordingly.

Please call me if you have any questions or need additional information.

Best regards,

GREG NELSON

Greg Nelson
Director of Land Development

GN/lrs

MEMORANDUM

DATE: February 15, 1994
TO: Board of Directors
FROM: Manager Kate Hurlocker
RE: Amberleigh Trails

Attached please find the City Staff report on the public/private trail issue. Included with it is the City attorney's analysis of the situation.

Two issues caught my attention:

- 1) The liability issue that we brought up was not addressed in the staff response.
- 2) The City attorney seems to be under the mistaken impression that Amberleigh will "adjoin" MCCA. He also does not seem to understand that the Covenants attached to the plat make all Amberleigh residents mandatory members of MCCA. I do not know if these errors materially affect his argument.

No public testimony is scheduled for Thursday (2-17-94) night's Planning Commission meeting. However, I recommend we write to the Commission, reiterating our position requesting clarification of the two issues listed above. I also recommend that the City attorney's opinion be provided to our attorney, and that his advice be requested.

STOEL RIVES BOLEY
JONES & GREY

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400 UNIVERSITY STREET
SEATTLE WASHINGTON 98101-1197
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Fax (206) 426-4206

(206) 386-7546

February 9, 1994



Commissioner Larry Schmidt
Chair, Mill Creek Planning Commission
15728 Mill Creek Blvd.
Mill Creek, WA 98012

Re: Public Trails and Access Easements; Authority to
Condition Plat Approvals

Dear Commissioner Schmidt:

This comes pursuant to the Planning Commission's (Commission) request that our office advise on the authority of the Commission to require private trails and access easements as a condition of plat approval. As more fully discussed below, we conclude that the Commission has only the authority to require public trails and access, and cannot use its plat approval power to create private or exclusionary access rights.

By way of background, the specific plat now at issue is the Amberleigh development. The developers propose to dedicate to the City the streets and sidewalks, including public use easements in two trails located within the Amberleigh development. The trail easements will permit public access through the subdivision and between public roads and sidewalks, but ownership and maintenance responsibilities would remain with the Amberleigh Homeowners Association ("AHA"). The Mill Creek Community Association ("MCCA") requested at the Commission's hearing on January 20, 1994 that the Commission require the trails (or alternatively, the use easements in the trails) be dedicated to AHA and restricted to the private use of MCCA members and/or the residents of the Amberleigh plat.

ANALYSIS

1. Scope of Commission Authority.

State law requires that a proposed subdivision, including any attendant dedications, not be approved unless the

Commissioner Schmidt
February 9, 1994
Page 2

City finds that the subdivision and dedication serves the public use and interest. RCW 58.17.110(2); see also MCMC 16.18.010(C). In particular, the City must affirmatively find under RCW 58.17.110(2) that the proposed subdivision makes:

[A]ppropriate provisions ... for the public health, safety and general welfare, and for such open spaces, ... streets or roads, alleys [and] other public ways ... [and] including sidewalks and other planning features that assure safe walking conditions for students.

The Commission operates as the City's fact finding agency under the authority of these statutes and is required to comply with their requisites. See generally Chapter 35A.63 RCW; RCW 58.17.030. The platting statute cited above explicitly requires the Commission to approve plats only after appropriate public access is provided and makes no mention of similar requirements for private or exclusionary access. Common rules of statutory construction provide that an unambiguous statute should be given its clear meaning and, more importantly, that "where a statute designates a list of things whereupon the statute operates, the inference arises that the legislature intended to omit other things not listed." In Re Eaton, 110 Wn.2d. 892, 898 (1988). We therefore conclude that the Commission explicitly is not charged by statute with providing for private access in subdivisions.

Dedication of access rights to a non-public organization for the exclusive use of its members cannot serve the public use and interest or create public streets or ways. It is commonly recognized that a dedication must comprise a grant of rights to the public. See 11A McQuillan, Mun. Corp. § 33.02 (3d ed. 1991) (hereinafter McQuillan). This rule is consistent with Washington's statutory definition of dedication, which states that a "[d]edication is the deliberate appropriation of land by an owner for any general and public uses." RCW 58.17.020(3).

Case law has further emphasized the requirement that public use is a necessary element of a valid dedication. For example, in Knudsen v. Patton, 26 Wn. App. 134 (1980), the court held that the conveyance of property for the benefit of certain landowners, but not the general public, was not a valid common law dedication of public land. Similarly, devoting the Amberleigh trails to the limited use of MCCA or AHA would limit

Commissioner Schmidt
February 9, 1994
Page 3

access to selected groups, providing no benefit to the general public. Such a result would run afoul of the Knudsen rule and could not constitute a dedication of public land.

2. Distinguishing Private Contract Rights From Public Authority.

A clear distinction exists between private land use contracts and public land use permitting authority. As stated succinctly in 5 Rathkopf's The Law of Zoning and Planning § 57.002:

As an exercise of the state police power to promote the general welfare, zoning is entirely divorced in concept, creation, enforcement, and administration from restrictions arising out of agreements between private parties who, in the exercise of their constitutional right of freedom of contract, can impose whatever lawful restrictions upon the use of their lands that they deem advantageous or desirable. Zoning restrictions and restrictions imposed by private covenants are independent controls upon the use of land, the one imposed by the municipality for the public welfare, the other privately imposed for private benefit. Both types of land use restrictions are held by courts to legally operate independently of one another.¹

As previously noted, the Commission's authority to condition the use of land arises from the Commission's existence as an arm of local government. The Commission therefore has no legal obligation to adopt or enforce private contract rights, and doing so in this instance could violate clear legislative mandates.

In this regard, we note that MCCA has often relied on the 1974 rezone contract executed between Snohomish County and MCCA's predecessor, United Development Corporation (UDC), as authority for MCCA's position on private access. As we have previously advised the Commission, the City's power to require

¹MCCA is, of course, free to purchase, negotiate or otherwise obtain from the developer, and thereafter enforce, a private covenant concerning use of the Amberleigh trails. However, the interplay of such a covenant and an inconsistent public access use is not addressed by this letter.

Commissioner Schmidt
February 9, 1994
Page 4

dedication of public land or easements as a condition of subdivision approval is not limited by the rezone contract. First, the rezone contract was expressly adopted by the City subject to the City's land use power. See Ordinance No. 85-95; Chapter 16.18, MCMC; and Chapter 58.17, RCW. Second, the rezone contract did not restrict the County or its successors from exercising its police power, but in fact expressly retained that power to the relevant governmental authority. Third, the City's obligation to uphold and abide by existing subdivision laws would supersede any contrary provision of the rezone contract. See 5 McQuillan § 19.37 (stating the rule that the police power cannot be contracted away by a state or municipality).

3. Equal Protection.

Beyond that, governmental action favoring one class of citizens to the express disadvantage of another would almost certainly violate the constitutional right to equal protection guaranteed by the 14th Amendment to the U.S. Constitution. "The general rule is that equal protection of the law is denied where public law is applied differently to different persons under [the] same or similar circumstances." 5 McQuillan § 19.13. We have not performed an exhaustive analysis of this issue, but note that the MCCA is asking the Commission to apply the platting statutes differently to the citizens of Mill Creek depending solely on whether they happen to live within or without the boundaries of the original planned residential development (PRD), or in some cases on whether they reside in a subdivision which only abuts such boundaries.

This classification appears similar to that rejected on equal protection grounds in Grader v. Lynnwood, 45 Wn. App. 876 (1986). In that case, a landowner held eleven contiguous platted lots, four of which contained lawful nonconforming uses. The municipal ordinance at issue provided that major alterations on a "site" (defined in part as "a lot or contiguous lots under one owner or single association") would be permitted only after abatement of any nonconforming uses on that site. Thus, when the landowner applied for a permit to develop his remaining lots, the City required as a condition of approval that the existing, legal nonconforming uses be abated. The court concluded that this requirement violated the landowner's equal protection rights because the City had no reasonable grounds for distinguishing between "persons who own contiguous parcels, one of which is the situs of a nonconforming use and the other, the subject of a proposed major alteration" and any other property owner who

STOEL RIVES BOLEY
JONES & GREY

Commissioner Schmidt
February 9, 1994
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wished to develop his land. Id. at 881-82. The same distinction appears to be lacking between property which happens to be within or adjacent to the original Mill Creek PRD boundaries and other property within the City.

For these reasons, we conclude that any condition of subdivision approval requiring a developer to dedicate land or easements for private or exclusive access would be an impermissible exercise of the Commission's authority. Please let us know if you have additional questions or concerns regarding this matter.

Sincerely,
Office of the City Attorney



Scott M. Missall

cc: Planning Commission
Bill Trimm
Joel Haggard, Esq.
Jerry Lutz, Esq.

FROM: SNO FIRE #7

TO: CITY OF MILL CREEK

FEB 4. 1994 2:48P

SNOHOMISH COUNTY FIRE DISTRICT #7
8010 180th St. S.E.
Snohomish, Wa. 98290
668-5357 / 486-1217 / FAX 668-6234

RECEIVED

FEB 04 1994

CITY OF MILL CREEK

Pete Freidman
City of Mill Creek

Pete,

Snohomish County Fire District #7 approves the road network proposed by the developer for the Amberleigh subdivision of Mill Creek and feel we will be able to serve all the units proposed. We would like to have input into the placement of hydrants in the complex due to the private drive access to some of the units. It would be in the best interest of all parties to have alternate access to all subdivisions, but this is not the general design of most of the City. As a recommendation it would be acceptable to use pedestrian pathway's as alternative emergency vehicle access provided they meet the requirement of weight limits and widths.



Gary A. Meek
Assistant Chief



January 20, 1994

Planning Commission
CITY OF MILL CREEK
15728 Mill Creek Blvd.
Mill Creek WA 98012

RE: Proposed Amberleigh Development - Public Testimony

Dear Planning Commission Members:

As you know the Declaration of Restrictive Covenants (Covenants) for the Mill Creek Planned Residential Development is attached to the Amberleigh property. These Covenants are administered by the Mill Creek Community Association (MCCA). The Covenants (Article I) state that MCCA's purpose is to protect the desirability of member's property. Amberleigh's future homeowners are our members.

In keeping with that covenanted purpose we respectfully request that the following modifications be made to the proposed Amberleigh development:

That Recommendations #24 and #25 of the Staff Report be re-written to;

- 1) Remove any references to public pedestrian easements, and;
- 2) Treat the two trails (Tract C & Tract GH) in the same manner as this Planning Commission treated the Belvedere Park trail ie., deed these tracts to the homeowners' association, free of any public pedestrian easements, and including an easement reserved for the members of the Mill Creek Community Association.

This request is based on the following:

1. The requirement to provide a public pedestrian access easement is a permanent physical invasion of private property, commonly known as a "taking". It does not mitigate a direct adverse impact, and is therefore an improper development extraction.
2. The requirement to provide a public pedestrian access easement is in direct conflict with the Rezone Contract (a contract between Mill Creek PRD developers and the City of Mill Creek) which states that open spaces within the PRD shall be usable by the PRD's residents, ie., not by the general public. Our attorney has advised us that, as a third party beneficiary of the Rezone Contract, MCCA has the right to file action to enforce it.
3. The requirement to provide a public pedestrian access easement will raise the number of people on the trails, thereby imposing additional and unnecessary maintenance costs and potential liability on the property owners. It will also compromise our ability to provide the commonly accepted level of security enhancement in the area. Such a requirement reduces the value of our private trail system, and may set precedent for the five currently undeveloped plats that we are also covenanted to administer.



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4. Because of the Covenanted requirement to protect the desirability of members' property, we may expose our membership to legal action if we do not protest the proposed requirement for a public pedestrian access easement. Such a requirement is not in keeping with the thirty-nine developments in the PRD to date. We have successfully protected the private nature of the trail system in the past. Please note, this issue is exactly the same as that we raised on MC Plat 20. In that case the Mill Creek City Council found in our favor.

Thank you for your consideration in this matter.

For the Mill Creek Community Association,


Barry Schlecht, President
Mill Creek Community Association

cc: Bill Trimm & Pete Friedman, City Planning Staff
City Recording Secretary
William E. Buchan, Inc., developer
MCCA Board of Directors
Jim Strichartz, attorney at law