



Inc. 1890

CITY OF EDMONDS

121 5th AVENUE NORTH • EDMONDS, WA 98020 • (425) 771-0220 • fax (425) 771-0221
www.edmondswa.gov

HEARING EXAMINER

BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

Phil Olbrechts, Hearing Examiner

RECEIVED
APR 01 2013
PLANNING DEPT.
DAVE EARLING
MAYOR

RE: Shaw Lane Plat Preliminary Plat PLN20120043	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
---	--

INTRODUCTION

The applicant is proposing a six lot preliminary plat for a 1.45 acre parcel located at 8620 218th St. SW. The proposed preliminary plat is approved subject to conditions.

ORAL TESTIMONY

Mike Clugston, Edmonds planner, stated that the Staff Report recommended the subdivision, six lots on 1.45 acres on 218th Street, be approved with an addition. The general area is zoned as RS-8, which means lots have to be a minimal 1,000 square feet. The ground is generally level, and there is residential landscaping grass. The lot layout itself is shown in attachment two of the staff report, in which you can see six lots with a proposed private road off 218th Street Southwest that the owners would access.

Mr. Clugston explained that, with respect to the comprehensive plan, the site is designated as single-family urban one, and that portion in the comprehensive plan identifies large lots like this one that have been redeveloped over time, met new zoning requirements, and been approved. An environmental review was required, and the applicant submitted a checklist. On February 28, the city issued a determination of non-significance based on the fact that there were not going to be any environmental impacts that could not be adequately mitigated with the existing development regulations. The lots also need to comply with zoning ordinance ECDC 16.20, the single-family zoning chapter, and he said each proposed lot meets the requirements for lot area as well as lot width, which is in page four of the staff report. Setbacks and structural lot coverage will be determined going forward, and this is summarized on pages four and five of the staff report.

1 Mr. Clugston said the plat must meet with the subdivision requirements of ECDC
2 20.75; there are four criteria that need to be met. The first is whether the proposed
3 subdivision retains environmental resources. In this case, the area is fairly level, and
4 there are no steep slopes, streams, wetlands, etc.; the only environmental features on
5 the sites are the existing trees. Additionally, plans concerning storm water will be
6 submitted after the preliminary development plan is approved, and attachment seven
7 contains the engineering requirements for storm water as well as the road, sidewalks,
8 etc. Improvements will include new sidewalks built to code, and the proposed private
9 road will meet the same requirements.

10 Mr. Clugston testified that, as far as critical areas, the area is largely vacant, and in
11 2012 a waiver was granted from further critical area study, because as he noted
12 above, the area does not contain any steep slopes, streams, wetlands, etc. The city is
13 required to give public notice for Type IIIB permits such as this, and notice of this
14 application was given on January 9, 2013 and notice of the hearing was given on
15 February 28, 2013. The city received three comments from the public regarding the
16 development plan. The first, from Mary Olsen, was concerned about whether 218th
17 street could handle additional cars given the width of the street as well as the lack of
18 sidewalks and of storm drains. He noted that the lots would actually improve the
19 area by adding sidewalks on the street. The city received other comments from two
20 families across the street from the plat, the Connelly's and Pat Helper, regarding the
21 trees on the eastern portion of the plot that they wanted to be removed. Generally, the
22 city likes to remove as few trees as possible. In this case, however, the trees adjacent
23 to the Connelly property are becoming hazards, and the trees adjacent to the Helper
24 property are on the property line, thus these trees could be removed if the Hearing
25 Examiner believes that is reasonable.

When Hearing Examiner asked, Mr. Clugston clarified that schools were located to
the east of the subdivision. Because the schools were within one mile, students would
have to walk. 218th Street is a little dicey because there were not crosswalks or
sidewalks until 84th Street. The lots have requirement improvement on the frontage,
but the rest of the frontage until 218th Street meets 84th Street is pretty much open
ditch and a narrow paved area that is dicey for students to walk; this is about a block,
or three hundred feet.

The Hearing Examiner asked whether the trees would become more dangerous in the
case that the development removed root support or something along those lines. Mr.
Clugston explained that, normally, the city would try to retain trees on the property
line, and roots would be protected during development. The Hearing Examiner asked
why the proposed road is private rather than public. Mr. Clugston was not aware why
the proposed road is private rather than public, but said that information should be in
the Public Works Standards.

Jean McConnell, engineering program manager, testified that there is no specific
language in the Public Works section in the code that talks about when the road
would or would not be dedicated to the city. Staff determined there was not a need for

1 public utilities in that area, because the lot owners could maintain the sewer system,
2 the water system, and the storm system, and the fire department determined that the
3 road did not require a hydrant. She added that specific concerns about private roads
4 have not been brought to the city before, and, because the city has limited resources
5 for roads, having a road be public is not necessarily a guarantee that the road will be
6 any better maintained than one under private control.

7 In response to further examiner questions, Mr. McConnell said that smaller
8 subdivisions are not required to have a circular cul-de-sac; you only have to have a
9 circular one if there are at least ten lots. In the planned subdivision for six lots, most
10 vehicles, including a fire vehicle, should be able to turn around easily by backing up.

11 **Applicant**

12 Mr. Todd Echelbarger, Echelbarger Investments, stated that he concurs with the Staff
13 Report and the recommendations for approval. He said that, as far as trees are
14 concerned with the neighbours, there would be no problem to remove those.
15 Additionally, the private road is built to the exact same standard as a public road.

16 **Public Comment**

17 Mr. Michael Connelly said that his family lives adjacent to the southeast corner of the
18 property, and he was the one that submitted the comment to the city about two trees
19 that he wants to be removed. He explained that the trees have been topped previously,
20 but they have multiple branches, and the one nearest to their house has already caused
21 damage with falling debris, and the other one is equally in bad shape. He brought
22 photographs. He said his family is fine with the project; they simply want to feel a
23 little safer in their home.

24 Mr. Alan Rutledge asked about the house removal and whether that was one hundred
25 percent certain.

26 **Staff Rebuttal**

27 Mr. Clugston stated that they have proposed to remove the house.

28 **EXHIBITS**

29 Attachments 1-21 identified at page 10 of the staff report were admitted into the
30 record as Exhibits 1-21. In addition, the following exhibits were also admitted during
31 the hearing:

32 Exhibit 22 A letter from PUD dated March 6, 2013

33 Exhibit 23 Photographs from Mr. Connelly featuring the trees closest to his house

1 **FINDINGS OF FACT**

2 **Procedural:**

- 3 1. Applicant. The applicant is Eichelbarger Investment LLC.
- 4
- 5 2. Hearing. The Hearing Examiner conducted a hearing on the application
- 6 on March 14, 2013 at 3:00 p.m. at the Edmonds Public Safety Complex in the Council Chambers.

7 **Substantive:**

- 8 3. Site/Proposal Description. The applicant is proposing a six lot preliminary
- 9 plat for a 1.45 acre parcel located at 8620 218th St. SW. The subject site is generally
- 10 level. Vegetation on the parcel consists of typical residential landscaping, including
- 11 grass, ornamental trees, and shrubs . There are also a number of larger evergreen and
- 12 deciduous trees on the parcel which contribute to a mature site appearance.

13 The following table summarizes the minimum required lot area for newly created parcels in the RS-8 zone (in square feet):

	Required Lot Area	Proposed Gross	Proposed Net
Lot 1	8,000	9,976	9,976
Lot 2	8,000	8,170	8,170
Lot 3	8,000	9,909	9,909
Lot 4	8,000	9,555	9,555
Lot 5	8,000	8,475	8,475
Lot 6	8,000	8,257	8,257
Tract 999	-	-	7,070

20 The following table summarizes the minimum required lot width for parcels in the RS-8 zone (distances in feet):

	Required Lot Width	Proposed Lot Width
Lot 1	70	86
Lot 2	70	86
Lot 3	70	81.5
Lot 4	70	81.5
Lot 5	70	87
Lot 6	70	87

1
2
3 4. Characteristics of the Area. The subject property is surrounded by
4 similarly zoned and developed lots with the exception of the large church parcel to
the south.

5 5. Adverse Impacts. There are no significant adverse impacts created by the
6 proposal. There are no critical areas on or close to the project site.

7 Public concerns have been raised about the adequacy of SW 218th, with assertions
8 agreed upon by staff that the road is narrow and that there are no sidewalks along
9 portions of the road, as discussed in more detail in FOF No. 6 below on walking
10 conditions to and from school. Sidewalks will be constructed along the frontage of
11 SW 218th street that will provide for safe pedestrian passage at that location. As
noted in the staff report, the City cannot legally require the applicant to construct
sidewalks along other portions of SW 218th so that is the most that can be done to
address the situation.

12 A couple other adjoining property owners requested that trees be removed that are
13 located along their property line where it adjoins the proposal's boundaries. From the
14 testimony provided by staff it does not appear that the proposal will be creating a
15 need to remove the trees by disrupting their root systems or otherwise making them
16 more dangerous or more of a nuisance to the adjoining property owners. Since the
17 City can only impose mitigation measures for adverse impacts created by the
18 proposal, the City cannot mandate the removal of the trees. However, to the extent
that the City's tree retention requirements are read to encourage the retention of the
trees, this decision will authorize their removal. Given that the applicant has stated he
is willing to remove the trees, it appears likely that the adjoining property owners will
be accommodated. Impacts to infrastructure are addressed in FOF No. 6.

19 The staff report notes that there are no hazardous conditions on the site and that views
20 will not be adversely affected by the proposal. There is no evidence or reasonable
inference that can be made to the contrary.

21 6. Adequacy of Infrastructure and Public Services. As conditioned by this decision,
22 adequate infrastructure will serve development as follows:

23 • Drainage: The city's drainage standards impose detailed requirements that
24 mandate that the development maintain pre-development off-site stormwater flow
25 volumes and velocities. Consequently, no adverse impacts to adjoining properties are
anticipated. A preliminary drainage assessment, Ex. 8, has been completed for the
project and reviewed by engineering staff. This preliminary assessment helps assure
that the general preliminary plat design can accommodate the stormwater facilities
necessary to control drainage and more detailed engineering and construction of
required improvements will be installed prior to approval of the final plat. The

1 assessment proposes an underground wet vault in the northwest corner of the plat that
2 will provide controlled release of the developed runoff into an existing public
3 stormwater system on 218th SW. Runoff from 218th frontage improvements will be
4 discharged into a new catch basin along 218th.

5 • Transportation: The proposal will generate 6 pm peak hour trips. Impacts to the
6 transportation system will be addressed by imposition of a traffic impact fee that
7 comes due at building permit issuance. Frontage improvements along 218th include
8 dedication of a ten foot wide right of way, the widening of 218th to provide for a
9 minimum 11-foot wide travel lane in the eastbound direction and installation of curb,
10 gutter and sidewalks. The interior access road will be a private road paved 20 feet in
11 width along with curb, gutter and sidewalks. No off-site traffic improvements were
12 found necessary for the proposal, which is consistent with the low trip generation of
13 the proposal.

14 • Parks and Open Space: No open or park space is required for the proposal and the
15 City also currently has no park impact fee. Without any evidence in the record of any
16 demand created for parks or open space by the proposal, no parks or open space
17 mitigation can be required.

18 • Water and Sewer: The environmental checklist reveals that water and sewer
19 service will be provided by the City of Edmonds. The staff report does not identify
20 whether there is adequate capacity to serve the proposed development, but given its
21 small scale it is safe to presume that is the case. The City Engineer's report includes
22 requirements, imposed by this decision, for the installation of an on-site sewer and
23 water system with stub outs to each lot. Water and sewer general facility charges will
24 ensure that the proposal will pay its fair share of capital costs to the City's sewer and
25 water infrastructure.

• Schools and Sidewalks: The subject parcel is primarily served by three area
public schools: Chase Lake Elementary School, College Place Middle School, and
Edmonds-Woodway High School. The staff report does not identify whether there are
sufficient school facilities to serve the proposal, but the demand for schools created
by the proposal is small enough that no specific assessment is necessary.

All three schools are within a 1-mile walking distance of the site. There are no
existing sidewalks on the portion of 218th Street between 88th and 84th Avenues
West. However, crosswalks are available at 218th and 84th and there are sidewalks
on the east side of 84th Street north to Chase Lake and on to Edmonds-Woodway and
College Place. As previously noted, the absence of sidewalks along portions of 218th
Street is a problem. The 25 mph speed limit will reduce the hazard to a degree for
children walking to and from school. Beyond this, the City cannot require the
applicant to provide for any sidewalks beyond the frontage of the project without
providing specific evidence of pedestrian trip generation beyond the frontage unless a
showing is made that the applicant's proportionate share contribution to pedestrian
facilities exceeds its frontage improvements. No such evidence is in the record. *See*

1 *Burton v. Clark County*, 91 Wn. App. 505, 516-17 (1998) (government has the burden
2 of proof in establishing nexus/proportionality for development exactions).

3 **CONCLUSIONS OF LAW**

4 **Procedural:**

5 1. Authority of Hearing Examiner. ECDC 20.01.003 provides the Hearing
6 Examiner with the authority to hold a hearing and issue a final decision on
preliminary subdivision applications, classifying them as Type III-B applications.

7 **Substantive:**

8 2. Zoning Designation. The subject property is zoned Single-Family
Residential (RS-8).

9 3. Review Criteria and Application. Chapter 20.75 ECDC governs the
10 review criteria for subdivisions. Relevant criteria are quoted below and applied
through corresponding conclusions of law.

11 **ECDC 20.75.085(A): Environmental.**

12 *1. Where environmental resources exist, such as trees, streams, ravines or wildlife*
13 *habitats, the proposal shall be designed to minimize significant adverse impacts to*
14 *the resources. Permanent restrictions may be imposed on the proposal to avoid*
15 *impact.*

16 *2. The proposal shall be designed to minimize grading by using shared driveways*
17 *and by relating street, house site and lot placement to the existing topography.*

18 *3. Where conditions exist which could be hazardous to the future residents of the*
19 *land to be divided, or to nearby residents or property, such as flood plains, steep*
20 *slopes or unstable soil or geologic conditions, a subdivision of the hazardous land*
shall be denied unless the condition can be permanently corrected, consistent with
paragraphs A(1) and (2) of this section.

21 *4. The proposal shall be designed to minimize off-site impacts on drainage, views*
22 *and so forth.*

23 4. The criterion is satisfied. As determined in Finding of Fact No 5, as conditioned
24 there are no significant adverse environmental impacts associated with the project and
25 there are no environmental resources on or near the site. The site is fairly level so
extensive grading will not be necessary. As determined in Finding of Fact No. 5, there
are no adverse view impacts created by the proposal and the project site has no
hazardous conditions. A preliminary drainage plan was submitted with the

1 preliminary plat, Ex 8 and as determined in FOF No. 6 the proposed drainage facilities
2 have been determined to be adequate.

3 **ECDC 20.75.085(B): Lot and Street Layout.**

4 *1. Lots shall be designed to contain a usable building area. If the building area
5 would be difficult to develop, the lot shall be redesigned or eliminated, unless
6 special conditions can be imposed on the approval which will ensure that the
7 lot is developed properly.*

8 *2. Lots shall not front on highways, arterials or collector streets unless there is
9 no other feasible access. Special access provisions, such as shared driveways,
10 turnarounds or frontage streets may be required to minimize traffic hazards.*

11 *3. Each lot shall meet the applicable dimensional requirements of the zoning
12 ordinance.*

13 *4. Pedestrian walks or bicycle paths shall be provided to serve schools, parks,
14 public facilities, shorelines and streams where street access is not adequate.*

15 5. As determined in FOF No. 3 all proposed lots meet the dimensional
16 requirements of the RS-8 zoning code. Each lot contains a buildable area as is
17 readily evident from the plat map, Ex. 19, and the fact that the project site is flat
18 without any environmental constraints. The lots do not front on any highways,
19 arterials or collector streets. As noted in Finding of Fact No. 3, sidewalks will be
20 located along the street frontage of the subdivision as well as the sole interior
21 private road.

22 **ECDC 20.75.085(C): Dedications.**

23 *1. The city council may require dedication of land in the proposed subdivision
24 for public use.*

25 *2. Only the city council may approve a dedication of park land to satisfy the
requirements of ECDC 20.75.090. The council may request a review and written
recommendation from the planning advisory board.*

*3. Any approval of a subdivision shall be conditioned on appropriate dedication
of land for streets, including those on the official street map and the preliminary
plat.*

10. The City Engineer's Report, Ex. 7, requires a 10-foot street dedication is required
on the south side of 218th Street SW ECDC 20.75.085(C)(1) only expressly

1 authorizes the City Council to require dedication of land for public use. The project
2 is conditioned on staff consulting with the City Attorney to determine whether
Council authorization is necessary for the dedication of the 78th Pl. W.

3 **ECDC 20.75.085(D): Improvements.**

4 *1. Improvements which may be required, but are not limited to, streets, curbs,*
5 *pedestrian walks and bicycle paths, sidewalks, street landscaping, water lines,*
6 *sewage systems, drainage systems and underground utilities.*

7 *2. The person or body approving a subdivision shall determine the improvements*
8 *necessary to meet the purposes and requirements of this chapter, and the*
9 *requirements of:*

10 *a. ECDC Title 18, Public Works Requirements;*

11 *b. Chapter 19.75, Fire Code, as to fire hydrants, water supply and access.*

12 *This determination shall be based on the recommendations of the community*
13 *development director, the public works director, and the fire chief.*

14 11. The project has undergone extensive review by the community
15 development director, the public works director (specifically engineering) and Fire
16 District No. 1. A number of improvements have been recommended as a result of
17 this review and they have been incorporated into the conditions of approval and have
18 been found to provide for adequate public infrastructure in FOF No. 6. Further, since
RCW 58.17.110 (applicable to short plats via RCW 58.17.060) mandates that
preliminary short plats may not be approved absent a finding of adequate
infrastructure, the criterion above is broadly construed to require the findings required
by RCW 58.17.110 and those findings are made as detailed in FOF No. 6.

19 **ECDC 20.75.085(E): Flood Plain Management.** *All subdivision proposals shall*
20 *comply with the criteria set forth in the Edmonds Community Development Code for*
21 *flood plain management.*

22 12. This project is not in a FEMA-designated flood plain.

23 **DECISION**

24 All subdivision criteria are met and the subdivision is approved, subject to the
25 following conditions:

1. City staff shall confer with the City Attorney to determine whether ECDC
20.75.085(C)(1) requires Council approval of all subdivision dedications. If

1 so, the dedications required of the plat shall be submitted to the City Council
2 for approval.

- 3 2. The applicant is authorized to remove trees along its shared boundaries with
4 the Connelly and Hepler properties.
- 5 3. Where located within a required setback, the top of any rockery or retaining
6 wall shall be no more than 3 feet above original grade without an approved
7 variance. This feature shall be shown on the civil improvement plans, with
8 the top of the wall and the original grade noted at 30-foot intervals along the
9 length of the wall.
- 10 4. Those trees of concern along the eastern property line of proposed Lots 4-
11 6 may be shown as 'to be removed during plat development' on the civil
12 improvement plans when they are submitted for City review and approval.
13 All retained trees on the site must be protected in accordance with ECDC
14 18.45.050 .
- 15 5. The Applicant must apply for review and approval of civil subdivision
16 improvement plans. In preparing these plans, the Applicant must address
17 and comply with the Engineering Division conditions listed "Required as a
18 Condition of Subdivision" on Attachment 7. The required documents and
19 applicable fees may be submitted to the Engineering Division.
- 20 6. Prior to final plat recording, the Applicant must complete the following
21 requirements :
- 22 a. Install any approved civil subdivision -improvements or provide a
23 bond for their completion.
 - 24 b. Make the following revisions to the plat:
 - 25 i. Add to the face of the Plat: "Conditions of approval
must be met and can be found in the final approval
for the subdivision located in File No.
PLN20120043 in the City of Edmonds Planning
Division."
 - ii. Include on the plat all required information,
including owner's certification, hold harmless
agreement, staff's approval block, a plat declaration,
and dedications and maintenance provisions, as
appropriate.
 - iii. If setbacks are to be shown on the final plat, add the
following statement to the face of the plat:
"Setbacks shown are for reference only and vest no
right."
 - c. Make sure all documents to be recorded meet the Snohomish
County Auditor's requirements for recording.
 - d. Submit two copies of the plat documents to be recorded for the
Planning and Engineering Divisions' approval.

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

e. Submit an updated copy of the title report with the documents proposed to be recorded.

Dated this 28th day of March, 2013.



Phil A. Olbrechts
Edmonds Hearing Examiner

Appeal Right and Valuation Notices

A party of record may submit a written appeal of a Type III-B decision within 14 days of the date of issuance of the decision. The appeal will be heard at a closed record review before the City Council according to the requirements of ECDC Chapter 20.07.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

