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DEVELOPMENT SERVICES
COUNTER

April 25, 2012

TO: Edmonds City Council

SUBJECT: Appeal of SEPA (State Environmental Policy Act), PRD (Planned Residential Development) and subdivision approval of Burnstead Construction Company Woodway Elementary Plat portion P-2007-17 and PRD portion P-2007-18.

1. **Name/Address/Phone:**

- a. Richard K. and Darlene C. Miller, 23623 107th Pl W, Edmonds, WA 98020, 206 542-5098
- b. Constantinos N. and Sophia Tagios, 23613 107th Pl W, Edmonds, WA 98020, 206 542-6803

2. **Basis for Standing:** We are all parties of record in this matter. Richard and Darlene have testified during open record public hearings in 2007 and 2012 respectively, and all four of us have submitted written materials during the period in which the record on this matter was held open. Collectively, we submitted written comments to the City Council on April 3, 2012. We reside adjacent to the subject property, and will be subject to significant adverse impacts from the project if it discharges water onto our property, or results in the existing chain link fence being moved.

3. **Identify the application:** The application that is the subject of this appeal is the Woodway Elementary plat/PRD proposed by Burnstead Construction, Bellevue, WA, with file numbers: P-2007-17, PRD P-2007-18. Additionally, we challenge the SEPA DNS, and/or lack of.

4. **Grounds for appeal:**

- a. ECDC 20.07.005(C) entitles us to submit written arguments to the Council, and we hereby exercise that right. The Millers will be out of state for their son's graduation from Graduate School on May 15, 2012, the date currently scheduled for the City Council's closed records review of this matter.
- b. The grounds for our appeal include the following, but are not limited to the following:

Drainage system is not planned by Burnstead to meet City and/or Washington state codes, nor common sense:

1. [See Record page 20, paragraph 16] The Hearing Examiner states that "The Applicant has demonstrated through expert testimony that storm water impacts may be fully mitigated...". We challenge this on two points. First, we view the PRD site frequently each day, and to our knowledge, no one acting on behalf of Burnstead has observed the water flows across, and the percolation problems within, the PRD site during heavy rains. Furthermore, from our observations of Burnstead's representatives who dug percolation test holes on the PRD site, we believe that the testing locations were

inadequate to have tested in areas with underlying clay. Without this first hand observation of the site during heavy rains, and without adequate percolation test holes to test percolation in areas of clay, the Hearing Examiner's Conclusion of Law stated in paragraph 16 that "The Applicant has demonstrated through expert testimony that storm water impacts may be fully mitigated..." is not justified. Furthermore, when a project such as this PRD places innocent, surrounding citizens at risk of property damage, and in this case very significant and expensive property damage, the possible result that the "...impacts may be fully mitigated..." (our underlining and bolding) is completely inadequate and unacceptable.

2. Burnstead's plan to raise the grade and remove the existing drainage ditch in the NW part of the property is not in compliance with the intent of the City of Edmonds' Comprehensive Plan adopted on March 15, 2005 and again December 22, 2011. In the Land Use Element, Water Resources & Drainage Management, section B.1. it states: "The natural drainage system (i.e., streams, ponds, and marshes) shall not be filled or permanently culverted except where no other alternative exists. Temporary culverting of streams shall be permitted during construction where site conditions present no other alternative. The natural condition should be restored immediately following construction."
 - a. It is clear that the intent of the City of Edmonds is that drainage systems that are already in place should not be terminated except for a brief, temporary period. And that they must be returned to the condition they were in prior to the temporary diversion. The existing drainage ditch has been in place for over 30 years and it has served as the primary drainage system for most of the property contained in the PRD as well as surrounding property, such as the steep slope to the north. It was in place before the Edmonds School District removed dirt mounds and graded the northwestern portion of its property, which occurred sometime after July 7, 1983.
 - b. Burnstead has not shown how the water that comes from the steep slope to the north will be transported to the vault and we are therefore concerned it will end up in our yards if the drainage ditch is filled in.
3. The PRD proposal does not provide adequate removal of water from the PRD property and the steep slope that is to the north.
4. The PRD property and the surrounding Woodway Meadows neighborhood have historically had infiltration and other water/drainage-related problems.
 - a. The baseball and soccer fields on the Burnstead property do not absorb water during heavy rains, such that water runs over a long distance to the existing drainage ditch. Burnstead's plan to utilize infiltration systems on all or some lots may not be possible because the soil conditions vary greatly and thus cannot be counted on to absorb water as needed in areas that are not covered by impervious surfaces.
 - b. The Hearing Examiner seems to agree that Burnstead's Storm water Management plan is adequate, and part of that was based upon the percolation studies that were done on Burnstead's property. However, it is a fact that the properties that surround Burnstead's property, and we believe Burnstead's

property also, have a significant problem regarding percolation to prevent flooding. For example:

- i. Most, or perhaps all, of Miller's yard is covered with clay about 12" below the surface. This has caused serious percolation problems. When digging holes for plants and trees over the years, they ran into clay all through the yard, and especially along the fence. We would expect clay to extend into Burnstead's property and cause poor percolation there also, which then would cause water to remain at the surface and drain to low points. If our yards are the low points, water from Burnstead property will drain to our yards which we already know do not percolate well, and we will be flooded even more than we currently are. Additionally, during heavy rains Miller's back yard develops very large pools on a regular basis about 10' from Burnstead's property. It is much worse during very heavy downpours. This PRD would make it even worse.
- ii. Miller's have always had poor percolation in both their back yard as mentioned above and in their front yard due to the clay soil. They dug a small French drain about 8-12" below the surface hoping to drain their front lawn's 'ponding'. Instead they hit clay. They continued to dig through that area with a pick. After digging down through the clay for several inches they broke through the clay and encountered open water! They could not determine its depth, but it was probably a few feet deep since the pick ax went down that far as they broke through the clay. They suspect this is an underground stream or pool. Our concern is that the same condition exists in many areas of Woodway Meadows yards and will be present in the Burnstead property. And, that the clay and excessive amount of water present will prevent surface water on Burnstead's property from percolating downward in a manner that will not cause flooding to our yards. The number and location of test holes on Burnstead's property was insufficient to learn the true condition of the land.
- iii. The property directly south of Millers, Lee's at 23631 107th PI W, has a big problem with 'ponding' on their driveway. The ground does not percolate in their yard, our yard, nor the land uphill from us so the water runs southward and 'ponds' on their driveway. This will be a big problem in Burnstead's property also if they don't revise their drainage plans to account for the poor soil in this whole area.
- iv. Our homes are located at the north end of 107th Place West. During heavy rains the storm drain system on our street cannot handle the large amount of water. And even though we are on the high end of 107th Place West, water comes up out of the storm drains and floods the street. Our neighbors' properties at the south end of 107th Place West have frequently been flooded during these heavy rains over the years for a distance of about 100' northward up the street, reaching depths of several inches. The inadequate drainage plans Burnstead is proposing

will only make all of this much worse, therefore, they must re-work all of their drainage plans so that none of their water adds to Woodway Meadows' already existing water problems.

- v. Miller's driveway had to be replaced soon after it was installed in 1980 because the underground water prevented the underlying soil from supporting it properly. This second driveway has failed too. In 1993 during an addition project, they attempted to repair the area with the most damage. Even the patched area has become badly damaged and is in great need of replacement. Miller's property cannot handle any additional water from other sources. The Burnstead property must be designed to handle all of its water.
 - vi. The original owners of 23601 236th Pl W, John & Ky Waldner, went to the considerable expense of having a low concrete wall poured around three of the four sides of their entire property - to keep the water from what is now Burnstead's property out of their yard and home. If the ditch is filled in and the Burnstead property level raised, the water could once again flood their property because the low wall would no longer be high enough to keep water out.
5. Individual home infiltration systems cannot be placed on the individual lots since the Stormwater Management Manual for the Puget Sound Basin dated February 1992 states "...roof downspout systems which should be located a minimum of 10' from any structure, property line or NGPE, and 30' from a water supply well, septic tank or drain field." The requirement for an infiltration facility to be located at least 10' from a structure and at least 10' from a property line is a total of 20', meaning that an infiltration system cannot be placed within the mere 15' setback Burnstead plans.
 6. Furthermore if any infiltration systems are placed on lots, they must be maintained properly to work as needed to keep our yard from flooding.
 - a. Our experience is that most homeowners do not maintain their infiltration systems and in some cases fill them in to use that space for other purposes.
 7. The water storage vault's calculations for size, percolation, etc. must be based upon the vault being partially (perhaps 50%) filled before any large rain event is measured. We do not believe the current proposed vault is adequate since its sizing appears to be based on it being empty when a large rain event occurs, which is highly unlikely given our weather patterns.
 8. Burnstead proposes to send overflow from their vault into the City of Edmonds' storm water management system. This is completely inappropriate and unacceptable because the Woodway Meadows development already has a long history of significant storm water management issues, and this would increase the flooding problems Woodway Meadows deals with and by extension the City of Edmonds, deals with. Any overflow from the vault should be contained within the Burnstead property in the vicinity of Tracts C and B.
 9. Despite the careful planning by the City of Edmonds for Hickman Park, the park has areas that flood during even just moderate rains. There are large puddles on the grass baseball field. And water runs to the south across the walking path and then across the

City's sidewalk and onto the street (237th St.) further exacerbating the drainage problems within the Woodway Meadows development.

- a. Please know that no matter what is said or calculated, if they fill in the ditch we will flood. Therefore, the ditch must be left where it is displacing the two houses planned for lots 10 and 11.
10. The SEPA does not appear to have, or have adequate, plans for handling water drainage.

Open Space and Perimeter Buffer do not meet City and/or Washington State codes nor are in the Public's Interest:

1. If the perimeter buffer is removed, and if the planned density of houses (27) is not reduced, this PRD will not fulfill the City's intent that there be a sense of open space. And the PRD will be out of sync with the more open feeling of the Woodway Meadows development which is adjacent to the PRD on two sides. This is not in the public's interest as described in the City's Comprehensive Plan.
2. It is not in the public interest also to lose 500+- feet of mature trees and vegetation, many of which are 30 years old because the developer proposes take up to 1 ½ feet of Woodway Meadows homeowners' property in order to have sufficient land to put in so many homes. An error by a public entity (Snohomish County's approval of the placement of the existing fence on the west edge of the Burnstead property) should not cause private citizens to lose their land.
3. The cost to the City of evaluating this PRD proposal, regulating compliance, and responding to Woodway Meadows homeowner lawsuits when their property is flooded by water coming from Burnstead's property will far exceed the minor property tax revenue that the City receives. This PRD is definitely not in the public's interest. It appears the City of Edmonds will receive approximately \$1,000. per year per PRD home from property taxes, or a total of approximately \$27,000 per year. This amount does not even begin to approach the amount the City will spend for costs mentioned above.
4. "Piggybacking": The Edmonds Beacon contained an article in its January 20, 2011 edition that said "The [Edmonds] City Council clarified a rule providing that open space areas surrounding certain residential developments cannot 'piggyback' onto the separate rear and side setback requirements of individual homes...." yet Mr. Lien said on 2/9/2012 that Burnstead was being allowed to piggyback the landscaping and set back. The City should not allow Burnstead to disregard its rules and the law. Fifteen feet of green space and 15 foot setbacks must exist separately for a total of 30' along the perimeter of the Burnstead property that borders existing homes.
5. 30' Setbacks + Buffer: Additionally, the Burnstead development should have at least 30' between the homes and the property rear boundaries so as to match more closely the surrounding Woodway Meadows properties and not appear to be a development of high rise homes squished into the perimeter of the Burnstead property in an unwise attempt to cram as many homes as possible on a piece of land that is too small.
6. Can't BBQ: We've heard that if the piggybacking is allowed, the set back will be so small that the City's laws won't allow the Burnstead property homeowners to use their backyards for things such as barbecuing because their BBQs would be too close to their property line and neighbors. The City should never allow an exception to a set back that

would keep an American citizen from using his/her BBQ in their own backyard for example. And the City cannot expect a homeowner to be so familiar with its rules and regulations to realize before purchasing the home that they wouldn't be able to do this. Do not allow Burnstead to develop the property as planned when it could ruin the 'American Dream' for home buyers.

7. Inappropriately taking of our land: We understand that there is a plan to move the existing chain link fence along Burnstead's western and southern borders. Apparently Tiffany Brown with Burnstead said this during a part of a hearing that we weren't able to be at. We did not know about Burnstead's plan to take our land. If the fence is not located correctly, there should have been full disclosure to the affected parties when the (public) Edmonds School District sold the land to Burnstead. This is completely unacceptable. That fence was installed under a County-permitting process by either the Edmonds School District or the developer of Woodway Meadows, Echelbarger Investments, LLC. As such, the fence's location was approved by a government entity. The City shouldn't allow the County's decision to be changed. The current homeowners along said fence relied upon the fact that the fence was positioned properly under a government approval and should not be penalized thirty-plus years later for a governmental mistake. Additionally, moving the fence would most likely kill the mature trees and shrubs that the Woodway Meadows homeowners have paid for, planted and cared for during these thirty-plus years. Furthermore, if what we understand is planned to occur, no one has ever been informed by the City that we stand to lose a large piece of our back yard due to a governmental mistake. That is just plain wrong and unfair and must not be allowed to occur.
8. Too little land for the PRD: Whether the City agrees that the fence should not be moved nor homeowners' land taken away from them, or Burnstead is prevented from moving the fence and taking land from the surrounding Woodway Meadows homeowners, it certainly appears from the PRD information that Burnstead then would not have sufficient land for the 27 homes planned based on City rules when the required Open Space and other regulations are properly applied. Burnstead should be required to re-submit a new PRD proposal to the City.
9. Misrepresentation: Burnstead appears to consider things such as sidewalks, small garden areas near the entrance to the development and the landscape perimeter buffer as open space when they are inappropriate, insufficient or inadequate. Burnstead must be required to create true Open Space in its development before the City considers it for approval.
10. Poor Aesthetics: Because the only real/useable open space area planned is the small tot lot isolated to one small area of the overall property, the remainder of the property which is the vast majority of the property, appears to be crammed together with no open space. The result is that when you view the development as a whole the aesthetics and feelings you get is one of lack of open space. Therefore they must re-do their plans, reduce the number of lots, and increase the true, usable open space.
11. Degrading the sense of open space: With the high density of houses in this PRD and the City's estimation that there would be four parking spaces, and therefore potentially four vehicles per home, the narrow and curving streets lined with many of those cars will

further give the feeling that the PRD is overly saturated with houses and vehicles, degrading the feeling of open space.

Relief Requested: Denial of the all Burnstead PRD applications regarding this property.

If the PRD application is approved:

- a. Require Burnstead to leave the existing drainage ditch in place in the NW portion of the property, and eliminate two homes planned for lots 10 and 11.
- b. Require Burnstead to keep the level of their property as it is now, not allowing it to be raised along its western or southern boundaries.
- c. Require all water in the PRD to remain within the PRD's boundaries.
- d. Require Burnstead to post a \$2M bond to cover water damages to homes and property in Woodway Meadows.
- e. Do not allow a variance that would allow the PRD to have above-ground wiring.

Statement:

- a. I support and agree with the appeals of our neighbors, including Cliff Sanderlin and Heather Marks, Colin Southcote-Want and Lora Petso, and Ira Shelton and Kathie Ledger.
- b. I have read this appeal and believe the contents to be true.

<u>Darlene C. Miller</u>	<u>4-25-2012</u>	<u>Richard K. Miller</u>	<u>4/25/2012</u>
Darlene C. Miller	Date	Richard K. Miller	Date
<u>Constantinos N. Tagios</u>	<u>4-25-12</u>	<u>Sophia Tagios</u>	<u>4/25/2012</u>
Constantinos N. Tagios	Date	Sophia Tagios	Date