

1 March 9, 1994  
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Introduced by Audrey Gruger  
Proposed No. 93-246

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ORDINANCE NO. **11264**

AN ORDINANCE granting the appeal of John Langkow, and approving, subject to conditions (modified), the preliminary plat of HAWTHORNE ESTATES, designated Land Use Services Division File No. S92P0008.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

This ordinance does hereby grant the appeal by John Langkow of the report of the zoning and subdivision examiner dated November 15, 1993, which was filed with the clerk of the council on December 2, 1993, to approve, subject to conditions, (modified) the preliminary plat of Hawthorne Estates, designated land use services division file no. S92P0008. The council finds that the recommendation of the examiner with respect to the matters appealed was based on an error in judgement or conclusion; does hereby adopt the findings and conclusions attached hereto; and grants preliminary approval to the proposed plat of Hawthorne Estates, as revised and received October 30, 1992, subject to the conditions of final plat approval attached hereto.

INTRODUCED AND READ for the first time this 29<sup>th</sup> day of March, 1993.

PASSED this 14<sup>th</sup> day of March, 1994.

Passed by a vote of 12-0.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

ATTEST:

Gerald A. Peterson  
Clerk of the Council

ATTACHMENT AFINDINGS:

## 1. General Information:

STR: 12-26-5  
 Location: Generally between Woodinville-Duvall Road N.E. and N.E. 178th Street (if extended), on both sides of 171st Avenue N.E.  
 Zoning: SE  
 Acreage: 15.5  
 Number of Lots: 17  
 Typical Lot Size: Ranges from 28,014 to 52,780 square feet  
 Proposed Use: Detached single-family residences  
 Sewage Disposal: Septic  
 Water Supply: Woodinville Water District  
 Fire District: #36 - Woodinville  
 School District: #417 - Northshore  
 Date of Application: July 24, 1992

2. Except as modified herein, the facts set forth in the Land Use Services Division Preliminary Report to the Zoning and Subdivision Examiner for the May 6, 1993 public hearing, as modified by the Addendum Report to the Examiner for the October 26, 1993 public hearing, are found to be correct and are incorporated herein by this reference.
3. This application was considered to be complete by the King County Subdivision Section as of the date of its submittal, July 24, 1992. As of that date, the Comprehensive Plan designation of the site was one home per acre, and the zoning classification was Suburban Estates. This zone allows residential development with a minimum lot size of 35,000 square feet.
4. The subject property is adjacent to the Woodinville-Duvall Road, a principal arterial which lies along the north property line. The property is bisected by 171st Avenue N.E., a collector arterial street. The applicant proposes the construction of two short cul-de-sacs, one east and one west from 171st Avenue N.E., and direct driveways onto 171st Avenue N.E. for the remaining lots. No direct access is proposed onto the Woodinville-Duvall Road.

Principal arterials are inter-community highways, for which the King County Road Standards require 100 feet of right-of-way. KCRS 2.02. The Woodinville-Duvall Road presently has 60 feet of right-of-way. As a condition of final plat approval, the Subdivision Technical Committee recommends that the applicant be required to dedicate 20 feet of additional right-of-way for future improvement of Woodinville-Duvall Road. The applicant contests that recommendation.

The traffic generated by this proposed development will not reduce the level of service on the Woodinville-Duvall Road, generate a need to widen the roadway, or otherwise create a need for increased right-of-way.

5. The Subdivision Technical Committee also recommends that the applicant's proposed N.E. 183rd Drive cul-de-sac be extended to the east property line, to serve future development of the adjacent property to the east; and that the proposed N.E. 181st Drive cul-de-sac be extended to the west property line, to serve future residential development to the west (unless a currently proposed private school is approved for the adjacent property).

The adjacent properties to the east and west of the proposed plat of Hawthorne Estates have frontage on the Woodinville-Duvall Road. In addition, 176th Avenue NE may be extended south to serve the property to the east, and a private road is planned to serve the presently proposed private school on the adjacent property to the west of Hawthorne Estates. No need for neighborhood traffic circulation or emergency access has been demonstrated to support a requirement to extend the proposed cul-de-sac streets to the property boundaries.

6. The Subdivision Technical Committee recommends that an access easement, 22 feet in width, be provided along the south property line, east of 171st Avenue N.E., to provide an additional ingress, egress, and utilities corridor to the adjacent property to the east. Dedication of that easement would maximize the development potential of the southwest corner of the adjacent property. Such a requirement would go beyond the need to provide for reasonable neighborhood traffic circulation, and would constitute a special benefit to the adjacent property owner.
7. A wetland exists on the subject property, between proposed Lots 11 and 13. While the area of this wetland on the property is relatively small, it is contiguous with an off-site forested wetland to the east, and was designated by Terra Associates, Inc. as a King County Class 2 wetland. A Class 3 stream, which originates within the subject property, flows through the wetland into an identifiable channel to the east. (Report dated October 27, 1992; Exhibit No. 39, Appendix.)

Following a March 26, 1993 on-site meeting among King County's Wetland Biologist, the Terra Associates Project Scientist, the property owner, and others, the applicant was requested to provide a supplemental wetland study to consider an additional wetland area identified to the north of the Class 2 wetland. That study was completed on August 30, 1993, and designated the additional area as an isolated King County Class 3 wetland, which it is permissible to fill, subject to appropriate mitigation. The supplemental study further stated:

"The larger site wetland is within a poorly-defined drainage swale which drains eastward off-site into adjacent forested wetland. The on-site wetland area is a palustrine emergent wetland with pasture grasses as the dominant vegetation. This area has been designated as a Class II wetland. It is proposed that this Class II wetland with a 50 foot wide surrounding upland buffer will be reserved from site development within a designated Native Growth Protection Area (NGPA). Mitigation for filling the on-site Class III wetland will be accomplished through enhancement of the Class II wetland and/or buffer.

"The existing on-site area has relatively low wetland functional value. As an abandoned pasture, the wetland has low value as wildlife habitat. Because of its relatively small size, it also has low functional value for surface water detention, retention, and groundwater recharge. The primary wetland functions provided by the site wetland are related to hydrological functions for water quality treatment.

"Provision of a 50 foot wide protected upland buffer should provide adequate protection for the site wetland and downstream waters. Hydrological functional values

of the site and the wetland are being mitigated partly through design of the storm detention system. Detention and retention capacity, and water quality treatment for surface water run-off, is being provided by the storm drainage system outside of the wetland. These functions would not be significantly enhanced for the developed site through preservation of additional wetland buffer". (Exhibit No. 42).

On or about April 22, 1993, the King County Land Use Services Division issued a Preliminary Report to the Examiner which recommended the following condition of final plat approval:

"A Class 2 wetland is located on the site and shall have a minimum 50-foot buffer of undisturbed native vegetation; however, an additional wetland study shall be performed to determine the boundaries of the adjacent wetland and the extent to which the wetland buffers extend onto and may affect the project site. This study shall also determine whether the wetland is contiguous with King County Big Bear Creek 10. If these wetlands are connected, 100-foot, Class 1 wetland buffers shall be applied to the wetland on-site". Condition 12.a, page 12, Exhibit No. 44.

Although the King County Biologist has made a cursory off-site exploration of the area between the subject property and Big Bear Creek Wetland No. 10, the applicant has no present legal authority to enter upon the adjacent property to undertake a thorough study of the extent of interconnection. Furthermore, the time within which such study could be requested by King County expired prior to the request being made. See Norco v. King County, 97 Wn 2d 680, at pp 686-687. Also, having already requested a wetland study, which was furnished in October, 1992, and having requested one supplement thereto after an on-site visit on March 26, 1993, a request for a third study is not reasonable under the circumstances of this case. Apparently in recognition of the untimeliness of the request, the Land Use Services Division has proposed a modification of Recommended Condition No. 12.a, to delete the requirement for an additional study and to change the classification of the on-site wetland to a Class 1 wetland, requiring a 100-foot buffer.

The Examiner finds, based upon a preponderance of the evidence in the record, that the on-site wetland is a King County Class 2 wetland, for which a 50-foot buffer is required. Furthermore, in light of the nature of the area surrounding the wetland, additional buffer area would provide no discernible benefit to the hydrological functioning of the wetland.

8. The subdivision and residential development of property, such as is proposed by this application, has downstream impacts upon water quality, as well as the quantity of flow following precipitation. Both water quality and flow volumes are generally regulated by the King County Surface Water Design Manual. In some areas, however, public resources or downstream flooding problems exist, which call for special protection in the interest of preserving and enhancing the environment and protecting the public health, safety and welfare. With respect to this proposed development, however, the requirements of the 1990 Surface Water Design Manual will provide reasonable protection of the environment.

9. One Hundred Seventy-First (171st) Avenue N.E. already exists as a public street (a collector arterial) which extends from the north property line to the south property line and beyond. Improvements necessary to be made to 171st Avenue N.E. as a result of this proposed development are relatively minor. Although the proposed development will change the visual appearance of the area, as seen from 171st Avenue N.E., the relationship of that relatively slight impact to the recommended condition that the applicant plant street trees on 171st Avenue N.E., to mitigate the visual impact of the proposed development, is, at best, tenuous. The Examiner cannot find the relationship between this asserted impact and proposed mitigation to provide the nexus necessary to support a requirement for the planting of street trees on 171st Avenue N.E. Similarly, there is little connection between the construction of N.E. 183rd Drive, through an existing pasture, and a need for street trees.

The area through which N.E. 181st Drive will be constructed is moderately wooded, with a second and third growth mixture of coniferous and broad-leaved trees native to the Pacific Northwest. The wooded area will be largely eliminated by the proposed development, and entirely eliminated in the area of street construction. This is an adverse impact upon the environment which can be mitigated by the planting of street trees as recommended by the Environmental Division.

However, this recommended condition is supported primarily by Policy R-17 of the Northshore Community Plan, enacted by Ordinance 10703, which became effective on February 11, 1993. The Determination of Environmental Non-Significance for this proposed action was issued approximately two months later, on April 20, 1993. However, this date was approximately nine months after the application for preliminary plat approval was submitted, and approximately four months after submission by the applicant of responses to all requests for special studies of matters bearing on the application.

WAC 197-11-310 requires the lead agency to make the threshold determination "as close as possible to the time an agency...is presented with a proposal....In most cases, the time to complete a threshold determination should not exceed fifteen days..." The ten months taken for the threshold determination process in this case was unreasonably lengthy; the determination should have been completed prior to February 11, 1993.

10. The proposed development will establish residential building sites adjacent to the Woodinville-Duvall Road, a principal arterial. The creation of these building sites in proximity to the arterial could have adverse impacts upon the health of persons who reside on those sites, unless reasonable steps are taken to mitigate the noise and visual impacts of the highway. Persons who acquire those sites can take such steps as they determine to be reasonable to mitigate those impacts.
11. The Surface Water Management Division and Land Use Services Division recommend that the biofiltration swale required for water quality enhancement, pursuant to Core Requirement No. 3 of the Surface Water Design Manual, be located within a tract which is deeded to King County for ownership and maintenance. The location of the swale within an easement meets the requirements and intent of the Surface Water Design Manual for lots of the size proposed by this development.

12. The applicant requests that the sensitive area tract(s) required for this proposal be owned by adjacent lot owners, rather than by a homeowners' association or other workable organization controlled by all lot owners. Ownership by the adjacent lot owners will provide adequate protection for the wetland and buffer located on the subject property.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, the Northshore Community Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonably necessary as a direct result of the development of this proposed plat.

CONDITIONS OF FINAL PLAT APPROVAL:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The area and dimensions of all lots shall meet the minimum requirements of the SE zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 8041, subject to variances granted by the King County Road Engineer.
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter

17.08 of the King County Code. If all lots are 35,000 square feet in size or more, they are exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04 and current storm drainage requirements and guidelines as established by Surface Water Management. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code and requirements and shall apply to all plats.
  - a. Except to the extent that more stringent requirements are imposed pursuant to these conditions of final plat approval, drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

"All building downspout, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the Department of Public Works. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

8. The following conditions specifically address drainage issues for this particular plat:
  - a. Preliminary review has identified the following Core and Special Requirements in the SWM Manual which are important for the design of this project and shall be addressed by the applicant's engineer. All other applicable requirements in the SWM Manual shall also be addressed in the design of drainage plans:

**Core Requirement No. 1** - Discharge of stormwater from the site shall occur at the natural location. As shown in the applicant's conceptual drainage plan, five separate sub-basins are located on the subject property. Two detention facilities are proposed to control stormwater from basins B and C. Sub-basins D and E shall be evaluated for exemption from detention requirements as outlined on page 1.2.3-5 in the SWM Manual. If the exemption criteria is achieved, then drainage from roof drains may be controlled by splash blocks or dispersion systems. The criteria for use of dispersion systems are outlined on page 1.2.4-4 of the SWM Manual.

**Special Requirement No. 5** - A wetpond may be required if the thresholds listed in the manual apply to the

site. The downstream drainage course has been classified as a Class 2 stream; therefore, if the amount of impervious surface subject to vehicular use exceeds one acre, a wetpond will be required. The applicant's engineering analysis should calculate the amount of new road improvements and driveways to determine if wetponds are required.

**Special Requirement No. 9** - Wetlands are located on the property; therefore, a floodplain analysis shall be performed. The 100-year floodplain boundaries shall be shown on the final engineering plans and recorded plat.

- b. Biofiltration of stormwater is also required for water quality enhancement. The biofiltration swales may be located within tracts which are deeded or dedicated to King County for ownership and maintenance (Access need be provided to the head of the swale, only), or may be in easements, at the option of the applicant. The proposed plat and drainage plans shall be designed to meet this requirement.
  - c. A drainage swale is located in the northern portion of the site which receives stormwater from a culvert located beneath the Woodinville-Duvall Road. If left open, the final drainage easement width shall be consistent with the requirements in Chapter 4 of the SWM manual and be designed to contain the calculated flow rate for the 100-year storm. If piped, an overflow route shall be shown or sufficient excess capacity provided, as approved by DDES.
  - d. The preliminary plat proposes a 20-foot drainage easement adjacent to Lots 1 and 2 which would accommodate potential upstream flows from Lake Leota and adjacent properties. This easement, subject to relocation with the approval of DDES, shall be shown on the final engineering plans and recorded plat. Upstream flows may need to bypass the proposed detention facilities, as required by the criteria shown on page 1.2.3-6 in the SWM Manual.
9. Due to constraints upon the property which may affect final Health Department approval for the on-site sewage disposal systems, and due to other engineering design requirements, minor changes may be allowed in the plat design, subject to approval by the Subdivision Technical Committee. A reduction in the total number of lots may be necessary.
10. The following conditions outline the required road improvements:
- a. One Hundred Seventy-First (171st) Avenue N.E. shall be improved on the plat frontage as a rural collector arterial. Several fire hydrants and numerous power poles exist along the road frontage. The location of these features shall be shown on the engineering plans, and the setback requirements for roadside obstacles which are outlined in KCRS 5.11 shall be addressed by the design engineer. Compliance with this criteria may require relocation of the utility structures.
  - b. The Woodinville-Duvall Road currently has an eight-foot paved shoulder along the frontage of the property. No additional improvements or right-of-way are required to be constructed or dedicated by Hawthorne Estates for this roadway.



- c. Northeast 183rd Drive and Northeast 181st Drive shall be constructed as proposed by the applicant and improved to rural minor access street standards.
  - d. To minimize access points on 171st Avenue N.E., joint-use driveway and utility easements shall be designed for Lots 1-2 and 10-11. The easements shall be, at minimum, 20 feet wide, and improved with 18 feet of paving and controlled drainage. The affected lots shall have reciprocal easements and be jointly responsible for maintenance.
  - e. As required by KCRS 5.05, a street illumination plan is required for the two proposed intersections onto 171st Avenue N.E. This plan shall be submitted with the applicant's engineering plans for review and approval by DDES and the Public Works Traffic Section. The requirements for a street illumination plan may be modified as determined by the County Traffic Section.
  - f. Existing vegetation may obscure vehicular sight distance for new intersections or driveways along 171st Avenue N.E. At the time of plat construction, the sight distance for all new roads and joint-use driveways shall be measured to verify compliance with KCRS 2.11 and 2.12. Unless variance or modification is granted by the King County Road Engineer, the required entering sight distance for design purposes shall be governed by the applicable road standard(s), as interpreted by the Road Engineer. Notes shall be provided on the final engineering plans to assure this requirement is implemented.
  - g. Modifications to the design standards in the above road conditions may be considered by King County Road Engineer pursuant to the variance procedures in KCRS 1.08.
  - h. There shall be no direct vehicular access to or from 171st Avenue N.E. from those lots which abut it, with the exception of proposed Lot 3 and the joint-use driveways serving Lots 1-2 and 10-11. A note to this effect shall be shown on the final plat!
11. Except as provided in c.i., below, the proposed subdivision shall comply with the Sensitive Areas Ordinance as outlined in KCC 21.54. Preliminary plat review has identified the following issues which apply to this project. The only sensitive areas identified on the site are wetlands.
- a. The Class 2 wetland located on the site shall be protected by an average minimum 50-foot-wide buffer of undisturbed or enhanced native vegetation.
  - b. An isolated, Class 3 wetland is located on the site. This wetland is not connected to the adjacent wetland. This wetland shall have a minimum 25-foot buffer of undisturbed native vegetation. As an alternative, this wetland, which is less than 2,500 square feet, may be eliminated provided a mitigation plan is prepared per Item h., shown below.
  - c. Wetlands and their buffers shall be placed in a separate sensitive area tract.
    - i. Ownership of sensitive area tracts may be held in an undivided interest by the owners of the abutting building lots within the development;

this undivided interest shall be transferred with the ownership of the lot(s) to which it is appurtenant.

- d. A minimum building setback line of 15 feet shall be required from the edge of a sensitive areas buffer.
  - e. Prior to permit approval, the owner of the property shall submit proof that a Notice on Title has been filed for record with the Records and Elections Division, to run with the land containing sensitive areas. The Notice shall be approved by DDES and inform the public record of the presence of a sensitive area or buffer, and application of this ordinance to the property, and that limitations on actions in or affecting such areas or buffers may exist.
  - f. Prior to commencing construction activities on the site, the applicant shall mark sensitive areas in a highly visible manner, and these areas must remain so marked until all development proposal activities in the vicinity of the sensitive area are completed.
  - g. Prior to final approval of construction activities on the site, the boundary between a sensitive area tract and adjacent land shall be identified using permanent signs. Sign specifications are available from DDES and shall be shown on approved plans.
  - h. All approved alterations of wetlands shall be replaced or enhanced on-site using the following formulas: Class 3 wetlands on a 1:1 basis, with equal or greater biological values including habitat value, and with equivalent hydrological values including storage capacity. A mitigation plan prepared by a qualified biologist shall be submitted with the engineering plans for review and approved by LUSD.
12. The following note shall be shown on the final engineering plans and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREA SETBACK AREAS**

Dedication of a Sensitive Area Tract/Sensitive Area Setback Area conveys to the public a beneficial interest in the land within the tract/setback area. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The Sensitive Area Tract/Sensitive Area Setback Area imposes upon all present and future owners and occupiers of the land subject to the tract/setback area the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the easement. The vegetation within the tract/setback area may not be cut, pruned, covered by fill, removed or damaged without approval in writing from King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/setback area and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction

or other development activity on a lot subject to the Sensitive Area Tract/Sensitive Area Setback Area. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required building setback line, unless otherwise provided by law.

13. The applicant or subsequent owner shall comply with King County Code 27.40, Road Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: 1) pay the MPS fee at final plat recording, or 2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat stating: "All fees required by King County Code 27.40, Mitigation Payment System (MPS), have been paid". If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
14. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners. This shall be stated on the face of the final plat.
15. If lot make-up area is required, calculations demonstrating compliance, including the provision of sufficient flat, dry, usable open space, must be submitted prior to approval of the plan and profile.

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