

ORDINANCE NO. **11418**

AN ORDINANCE granting the applicant's appeal, reversing the recommendation of the Zoning and Subdivision Examiner, and approving subject to conditions the preliminary plat of Spring Lake Park Estates, designated DDES File Nos. S91P0017 and S91VA053.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The council finds the following:

- A. The applicant requests preliminary plat approval for 38 residential lots in the GR 2.5 zone. The zoning and subdivision examiner submitted a report and recommendation dated June 23, 1993, which was filed with the clerk of the council July 8, 1993, to approve lots 1 through 32 of the preliminary plat of Spring Lake Park Estates, subject to conditions. The examiner's report and recommendation for the preliminary plat application also includes decisions on an appeal of a SEPA threshold determination and a request for a variance from sensitive areas requirements. The examiner erred in his report in recommending findings and conclusions for the preliminary plat application which require deletion of lots 33 through 38 because of inadequate road access and, pursuant to SEPA and variance authority, conditions which are not required to alleviate adverse impacts to streams and wetlands.
- B. Except as modified by sections 2, 3 and 4 of this ordinance, the council adopts and incorporates the findings and conclusions contained in the report and recommendation of the zoning and subdivision examiner dated June 23, 1993, which was filed with the clerk of the council July 8, 1993, approving, subject to conditions, the preliminary plat of Spring Lake Park Estates, designated as Department of Development and Environmental Services File Nos. S91P0017 and S91VA053.

1 SECTION 2. With respect to the SEPA threshold determination
2 appeal decision:

3 A. The second paragraph of finding no. 3 and all of
4 findings nos. 4, 5, 12, 13, 15, 17, 20 and 21 within
5 the examiner's June 23, 1993 report and recommendation
6 are found to be in error and are deleted.

7 B. The following new findings are hereby adopted and
8 incorporated herein as the findings of the council:

9 4. The applicant has appealed the DS issued with
10 respect to road access to the northern six lots.
11 In addition, both parties have raised a variety
12 of other SEPA-related issues. In order to fully
13 resolve all outstanding SEPA issues within a
14 single proceeding, the parties have agreed to
15 submit the SEPA issues for de novo consideration
16 within this consolidated appeal and plat hearing.

17 12. Recent studies demonstrate that adverse impacts
18 from keeping horses are most likely to occur on
19 lots below one and one-half acres in size. These
20 impacts result from over-grazing and inadequate
21 farm management practices. The impacts produced
22 by over-grazed, small pasturage lots include
23 vegetation loss, run-off increase, erosion and
24 sedimentation, increase in nutrients and coliform
25 bacteria, and compaction of saturated soils.
26 However, such impacts can be mitigated if good
27 farm management practices are implemented. Such
28 practices include manure storage, mud management,
29 fencing of sensitive areas, and winter
30 confinement of animals during periods of
31 saturated soils. Employment of good farming
32 management practices on the lots of this plat is
33 particularly important because of the property's
34 location near Peterson Creek, a salmonid bearing
35 stream, and its associated wetland systems, which

1 receive runoff flows from the plat. In response
2 to these concerns, the applicant has agreed to
3 the imposition of a condition which requires each
4 lot and tract intended to be used for the keeping
5 of livestock to implement a farm management plan
6 incorporating best practices for the management
7 of grazing and pasture, manure, watering, feeding
8 areas, and stream corridors. Each farm
9 management plan shall be developed in
10 consultation with and approved by the King
11 Conservation District. Implementation of such
12 farm management plans will adequately mitigate
13 any potential adverse impacts resulting from
14 livestock use.

15 13. Testimony has also been offered suggesting that
16 hobby farm usage could impair the ability of the
17 lots of Spring Lake Park Estates to accommodate
18 on-site sewage disposal systems. No sewage
19 disposal system will be installed on the lots of
20 the plat without Health Department review and
21 approval. This review and approval will assure
22 that any on-site sewage disposal system will
23 function properly.

24 17. Concern has also been expressed that plat
25 development may alter the hydroperiods for
26 downstream wetlands and thereby impair their
27 function and viability. However, this plat both
28 will be subject to a wetland mitigation plan and
29 will be required to comply with the standards of
30 the 1990 Surface Water Management Manual for
31 drainage impacts. These two requirements provide
32 ample authority to regulate surface water flows
33 and impacts and assure that any impacts
34 encountered will not be significant.

1 C. Conclusions 1 through 4 contained within the examiner's
2 threshold determination appeal decision are in error
3 and are deleted. The following conclusions are hereby
4 adopted and incorporated herein as the conclusions of
5 the council:

6 1. Where the parties have stipulated to de novo
7 consideration of environmental issues within a SEPA
8 threshold determination appeal, the appeal hearing
9 has been consolidated with the public hearing on the
10 underlying preliminary plat application, and the
11 Examiner has imposed new conditions of mitigation on
12 the proposal under SEPA authority as a consequence
13 of such consolidated hearing, KCC 20.44.120.C.1
14 authorizes an appeal of the SEPA decision to be
15 consolidated with the appeal of the preliminary plat
16 application and to be considered therewith.

17 2. With respect to road impacts, existing access to the
18 northerly plat property lots via Lake Desire Drive
19 S.E. is deficient in its ability to meet the
20 requirements of the King County Road Standards.
21 However, whether viewed primarily from the
22 standpoint of cul-de-sac length, road design and
23 width, or service capacity, the record demonstrates
24 that the plat proposal as such will not have a
25 significant adverse impact to the existing system.
26 The problems attendant to the road system inhere in
27 its existing condition and are not derived from this
28 project's relatively minor contribution to them. We
29 therefore conclude that the approval of the northern
30 six lots of this plat will not in itself constitute
31 a new significant adverse impact.

32 3. Impacts to wetlands and streams from plat
33 development can be adequately mitigated through the
34 plat and variance conditions attached hereto as
35 augmented by sensitive areas and surface water

1 management requirements. Further conditions are not
2 required under SEPA authority to mitigate any
3 probable significant adverse environmental impacts
4 of this proposal.

5 D. The examiner's threshold appeal decision and order,
6 including condition no. 1, are based upon erroneous
7 conclusions that the adverse environmental impacts of
8 the proposal cannot be adequately mitigated through
9 normal sensitive areas and surface water management
10 review procedures as augmented by approved farm
11 management plans and that a SEPA decision consolidated
12 with a preliminary plat recommendation is not
13 reviewable on appeal by the council. Based on these
14 erroneous conclusions the examiner's decision is
15 reversed, the requirement of a mitigated determination
16 of non-significance is eliminated and the order
17 containing condition no. 1 is deleted.

18 SECTION 3. With respect to preliminary plat approval:

19 A. Findings no. 3 and 4 within the June 23, 1993 report
20 and recommendation of the zoning and subdivision
21 examiner are found to be in error and are deleted. The
22 following new findings no. 3 and 4 are hereby adopted
23 and incorporated herein as findings of the council:

24 3. Findings nos. 1 through 19 of the decision on an
25 appeal of threshold determination for Spring Lake
26 Park Estates appended hereto, as amended and
27 modified within this ordinance on appeal, are also
28 incorporated by reference with the same effect as if
29 fully restated herein.

30 4. The major issues which relate to the review and
31 approval of the preliminary plat application for
32 Spring Lake Park Estates concern the status of the
33 smaller northern parcel for which are proposed Lot
34 Nos. 33 through 38. As noted above, Lake Desire
35 Drive S.E., the access road to this portion of the

1 plat, fails to meet the King County Road Standards
2 for cul de sac length and for road width and design.
3 However, the record also indicates that this road is
4 largely built out, with more than 75 platted lots
5 already using it for ingress and exit, and does not
6 carry large traffic volumes. The six lots of Spring
7 Lake Park Estates lie at the end of the road with
8 only wetlands and streams lying to the east. No
9 alternative access exists for these six lots.
10 Moreover, the fact that these six lots are isolated
11 from the remainder of the plat occurs only because
12 King County has purchased the intervening property
13 for park usage. King County has therefore not only
14 created the isolation which affects access to this
15 parcel but also has permitted park lands recently
16 purchased from the applicant to be reached via Lake
17 Desire Drive S.E. without requiring road
18 improvements. All in all, these facts suggest that
19 the sub-standard condition of Lake Desire Drive S.E.
20 is a historic problem unrelated to the minor
21 increase in access use imposed by the six lots of
22 Spring Lake Park Estates. The correction of this
23 sub-standard condition ought to be regarded as a
24 public rather than a private concern. In this
25 instance, no public harm results from the addition
26 of a final six lots to the Lake Desire Drive S.E.
27 road system, which provides adequate road access at
28 this low volume location.

29 B. Conclusion no. 1 within the preliminary plat
30 recommendation of the examiner dated June 23, 1993, is
31 found to be in error and is deleted. In addition,
32 within conclusion no. 2, the words "Lot Nos. 1 through
33 32" are deleted and are replaced with the words "the
34 lots". Within conclusion no. 3, the words "Lot Nos. 1
35 through 32" are also deleted and replaced with the

1 words "the lots", and in the following line, the words
2 "such portion of" are deleted.

3 The following new conclusion no. 1 is hereby adopted
4 and incorporated herein as a conclusion of the council:

5 1. While the road system which serves the northern plat
6 parcel consisting of proposed Lot Nos. 33 through 38
7 is deficient because it fails to meet current King
8 County Road Standard requirements for permanent
9 cul-de-sac length, service capacity and roadway
10 width and design, due to the nature and extent of
11 the deficiency it is not possible for this applicant
12 to correct the problems. The addition of a few
13 additional lots to this road system will not result
14 in a substantial increase in existing problems and
15 does not provide a basis for denying preliminary
16 approval to proposed Lot Nos. 33 through 38. The
17 plat makes appropriate provisions for streets and
18 roads.

19 C. Condition nos. 8 and 31 within the zoning and
20 subdivision examiner's June 23, 1993 report and
21 recommendation for the preliminary plat approval of
22 Spring Lake Park Estates are found to be in error and
23 are deleted. The erosion hazards targeted by condition
24 no. 8 are adequately addressed by conditions imposing
25 seasonal clearing limitations, while condition no. 31
26 is based on an erroneous conclusion concerning the
27 adequacy of the northern site access. Plat condition
28 no. 22 is amended to delete the sentence reading,
29 "Desedimentation of off-site downstream culverts and
30 regrading of existing off-site stormwater conveyance
31 ditches may be required". The language deleted is
32 objectionable because it imposes on the applicant a
33 responsibility to maintain off site public facilities
34 and correct impacts therein which are not the result of
35 its proposal. Plat condition no. 37.C is amended as

1 agreed by the applicant to include the addition of the
2 following words at the beginning of the sentence:
3 "Except as permitted pursuant to a sensitive areas
4 variance,". Within the second sentence of plat
5 condition no. 45, the words "and hydrology" are
6 deleted, as well as the reference reading, "(See
7 variance condition No. 4)", at the end of the
8 condition. Maintenance of wetland hydrology is beyond
9 the scope of the county's adopted regulatory authority
10 and is not required to mitigate significant adverse
11 environmental impacts. The first sentence within plat
12 condition no. 47 is amended by the insertion of the
13 word "wetland" as the second word of the sentence and
14 by the deletion of the word "five" at the end and its
15 replacement with the word "two". The changes to
16 condition no. 47 are required to clarify its scope and
17 to limit bonding requirements to a reasonable period.
18 In summary, the modifications to conditions 8, 22 and
19 47 are required to correct errors made by the examiner
20 in matters of judgment while the modifications to
21 conditions 31 and 45 rectify recommendations based on
22 erroneous conclusions.

23 SECTION 4. With respect to the decision approving a variance
24 from sensitive areas requirements:

25 A. Finding nos. 1, 3 and 4 within the examiner's variance
26 decision contained in his report and recommendation
27 dated June 23, 1993 are found to be erroneous and are
28 deleted. The following new findings no. 1 and 3 are
29 hereby adopted and incorporated herein as findings of
30 the council:

31 1. Findings nos. 1 through 19 of the Decision on Appeal
32 of Threshold Determination appended hereto, as
33 amended and modified within this ordinance on
34 appeal, and finding no. 2 of the preliminary plat
35 recommendation appended hereto are incorporated by

1 reference with the same effect as if fully restated
2 herein.

3 3. If developed in accordance with King County platting
4 requirements and appropriately conditioned to limit
5 wetlands impacts, the subdivision can be constructed
6 in a manner which will not be detrimental to the
7 public welfare or injurious to off-site property or
8 improvements. The impacts of future use of the lots
9 for horse pasturage on hobby farms and the attendant
10 clearing of vegetation from the lots will be
11 adequately mitigated through the wetland mitigation
12 plan and by the imposition of farm management plan
13 requirements on lot development for livestock use.
14 Such restrictions, as well as those imposed by
15 standard Surface Water Management drainage
16 requirements, will control erosion and sedimentation
17 and protect hydroperiods and water quality. To the
18 extent that additional clearing restrictions are
19 required, a condition is imposed which limits
20 construction activities to the period between June 1
21 and September 30 of each year. This restriction
22 protects against erosional impacts during winter wet
23 weather. With regard to the Peterson Creek system,
24 in addition to the safeguards noted above it is
25 observed that this plat contributes a relatively
26 small quantity of the total flows entering the
27 watershed, and its contribution to system impacts is
28 proportionately minor.

29 B. The decision by the examiner that a variance from
30 sensitive areas requirements is not subject to appeal
31 to the council in conjunction with review of the
32 associated preliminary plat is based upon an erroneous
33 conclusion. The following new conclusion is hereby
34 adopted and incorporated herein as a conclusion of the
35 council:

1 2. Review of an application for a variance from
2 sensitive areas requirements in conjunction with an
3 appeal of the preliminary plat application is
4 authorized by KCC 21.54.020.B.

5 C. Variance condition nos. 5.A, 5.D, and 7 contained
6 within the examiner's June 23, 1993 decision are found
7 to be erroneous and are deleted. Variance condition
8 no. 2 is amended to delete everything after the first
9 sentence of the condition. Variance condition no. 5.B.
10 is amended to delete the words in the first line
11 reading "larger than two acres". These conditions as
12 recommended by the examiner contain provisions which
13 are beyond the scope of the impacts caused by the
14 variance approval. They also attempt to mitigate
15 impacts which are addressed by other conditions and
16 review processes, including surface water management
17 review, wetland mitigation requirements and regulation
18 pursuant to farm management plans. As such, imposition
19 of these conditions in the form proposed by the
20 examiner was an error in judgment. Variance condition
21 no. 8 is amended as stipulated by the applicant to add
22 within the first sentence the words "involving
23 clearing, grading, and other earth moving work" after
24 the words "construction activities". Also, within the
25 first sentence of condition no. 8, the term
26 "September 31" is amended to read "September 30", and
27 within the second sentence the term "May 30" is amended
28 to read "May 31".

29 The following new variance condition no. 5.D is
30 hereby adopted and incorporated herein as a condition
31 of the council:

32 5.D As used herein, an approved farm management
33 plan means one which has been developed by the
34 King Conservation District and complies with
35 the requirements of Ordinance No. 11168.

1 SECTION 5. The King County council hereby reverses the
2 recommendation of the zoning and subdivision examiner in his
3 report of June 23, 1993, filed with the clerk of the council on
4 July 8, 1993; grants the appeal of Spring Lake Limited; and
5 grants preliminary approval for the plat of Spring Lake Park
6 Estates, subject to the conditions set forth in the examiner's
7 report and recommendation as amended by this ordinance.

8 INTRODUCED AND READ for the first time this 4th day of
9 May, 1992.

10 PASSED this 18th day of July, 1994.

11 KING COUNTY COUNCIL
12 KING COUNTY, WASHINGTON

Passed by a vote of 8-5.

Kent Pullen
Chair

13 ATTEST:
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16 Gerald A. Peterson
17 Clerk of the Council
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