



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 30, 2002

Ordinance 14444

Proposed No. 2002-0195.2

Sponsors Sullivan

1 AN ORDINANCE concurring with the recommendation of
2 the hearing examiner and approving, subject to conditions,
3 upon the application of Cougar Ridge, to amend King
4 County Title 21A, as amended, by amending the zoning
5 map thereof, reclassifying certain property from R-1P to R-
6 1, designated development and environmental services file
7 no. L02TY401.

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10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. This ordinance adopts and incorporates the findings and
12 conclusions of the June 3, 2002, report and recommendation of the hearing examiner,
13 filed with the clerk of the council on July 24, 2002, upon the application of Cougar Ridge
14 to reclassify certain property described in development and environmental services file
15 no. L02TY401.

16 SECTION 2. The recommendation of the hearing examiner to reclassify the
17 subject property from R-1P to R-1 is hereby adopted, subject to conditions. Upon

18 this ordinance becoming effective, the land use services division shall amend the official
19 zoning maps of King County to reflect this action.

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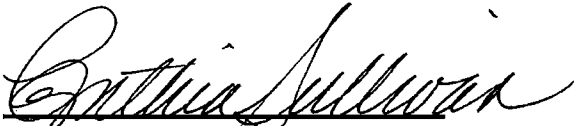
Ordinance 14444 was introduced on 4/29/2002 and passed by the Metropolitan King
County Council on 7/29/2002, by the following vote:

Yes: 9 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Constantine, Mr. Pullen, Ms. Hague and Ms. Patterson

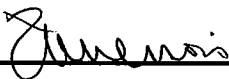
No: 0

Excused: 4 - Mr. Pelz, Mr. McKenna, Mr. Gossett and Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 9 day of August, 2002.



Ron Sims, County Executive

Attachments A. Hearing Examiner Report dated 6-3-02

RECEIVED
2002 AUG -9 AM 11:42
CLERK
KING COUNTY COUNCIL

June 3, 2002

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File No. **L02TY401**
Proposed Ordinance No. **2002-0195**

COUGAR RIDGE

Rezone Application from R-1P to R-1

Location: West of 182nd Avenue SE and north of SE 65th Place, Issaquah

Applicant: Davison, Scholten, et al, *represented by*
Tim Holderman
Sound Engineering
1019 Pacific Avenue, #906
Tacoma, Washington 98402
Telephone: (253) 573-0040
Facsimile: (253) 573-0142

King County: Department of Development and Environmental Services,
Current Planning Section, *represented by*
Tom Slade
900 Oakesdale Avenue
Renton, Washington 98055
Telephone: (206) 296-7059

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Recommendation	Approve, subject to conditions

PRELIMINARY MATTERS:

Complete application:	January 3, 2002
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EXAMINER PROCEEDINGS:

Hearing Opened: May 30, 2002
 Hearing Closed: May 30, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Development condition NC-P1
- Public facilities
- Reclassification pre-effective conditions

SUMMARY:

The rezone application is recommended for approval.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. GENERAL INFORMATION:

Proponent: Sound Engineering
 Attn: Tim Holderman
 1019 Pacific Avenue, #906
 Tacoma, WA 98402
 (253) 573-0040

Location: West of 182nd Avenue SE and North of SE 65th Place,
 Issaquah, WA

County Contact: Tom Slade, Program Manager II
 (206) 296-7059
 Email – tom.slade@metrokc.gov

Zoning: R-1-P
 Community Plan: Newcastle
 Section/Township/Range: 19-24-6
 Parcel Numbers: 192406-9051 and 192406-9062
 Water Service: Interim Private System
 Sewer Service: City of Issaquah

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the May 30, 2002 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.

3. Sound Engineering on behalf of the property owners has filed an application to reclassify 10.15 acres lying on the hillside north of Cougar Mountain Park from R-1-P to R-1. Two interconnected short plat applications (L02S0002 and L02S0003) are currently pending to subdivide the parcels into a total of 8 lots.
4. The P-suffix condition which applies to the two parcels dates back to the 1983 Newcastle Community Plan. At that time a Cougar Mountain village master plan development area was designated and three potential village sites identified. The development conditions established within the 1983 Newcastle Community Plan have survived largely unchanged and are now embodied in post-conversion condition NC-P1 adopted in 1997. This condition carries forward the framework for MPD development based on the old Title 21 Growth Reserve 2.5-acre designation but also contains the following provisions under which properties may opt out of the MPD overlay requirements:

“If King County approves an overlay master plan for village development in the Cougar Mountain subarea and this property is not included within the boundaries of such a master plan, then the owners of this property may apply for a reclassification.

“Approval of such reclassification application shall be based on its consistency with applicable County plans and policies, its compatibility with the land uses of the improved master plan, and the availability of public facilities to the site.”

This development condition also survived the 2000 Comprehensive Plan Update, and the continued viability of the Cougar Mountain Village UPD concept is acknowledged within Comprehensive Plan Policy U-171. It is staff's understanding, however, that during the 2000 Update review the P-suffix condition was dropped for a number of properties in the general vicinity of the Applicants' parcels. It is the Applicants' contention that failure to eliminate the P-suffix condition for their parcels was a legislative oversight.

5. Subsequent to the adoption of the Newcastle Community Plan, the North Village MPD was approved in the late 1980's and constructed within the northernmost of the three potential village sites identified within the Community Plan. This area lies north of the Applicants' parcels and is separated from them by the Southeast 60th Street neighborhood, an existing area of residential development that was excluded from the MPD overlay district by the 1983 plan. While North Village lies within the area north of Southeast 60th Street, the Applicants' parcels lie south of that roadway near the northern boundary of the largest overlay district lobe. Cougar Mountain Park now lies directly south of the Appellants' site, thus making it an isolated remnant of P-suffix property bounded on the south by the park and on the north by the Southeast 60th Street neighborhood. Further, the 1983 Newcastle Plan is premised on potential village development encompassing at least 500 contiguous acres, and the current zoning code UPD requirements postulate a 200 acre minimum. Thus, due to their isolated location, the Applicants' parcels have no real prospect of being joined with other similar properties to form a larger MPD proposal meeting minimum development area requirements.
6. According to the zoning map submitted to the record by staff, there is little in the way of other R-1-P zoned parcels near the Applicants' property. Parcels adjacent to the west are now part of the City of Bellevue, contiguous parcels to the north and east are presently zoned R-1, while the parklands to the south are zoned RA-5-P. A fairly substantial block of R-1-P zoned properties remains northeast of the Appellants' site near North Village and a small sliver of R-1-P property less than 5 acres in size is located some distance away to the east.

7. The Applicants' parcels are wooded undeveloped properties lying on the north slope of Cougar Mountain. The site is traversed by two Class 3 intermittent streams and contains areas where the slopes exceed 40%. Site access is a major unresolved issue for the two short plats that are under review. The original design submitted by the Applicants proposed to provide access from the south via a cul-de-sac system connected to the existing park access road. The Parks Department, however, has not agreed to convey the easement necessary for the construction of this access road, and the short plats will need to be redesigned to provide access from the north rather than the south.
8. Although the Applicants appear to have an easement right allowing them to develop a road from the north, this approach presents its own set of difficulties, particularly if the Applicants continue to focus lot development on the southern half of the property where presumably the territorial view opportunities are better. According to the topographical data, there is only a relatively narrow corridor between 80 and 100 feet in width where a road could be constructed providing access from the southern boundary to the northern half of the property without encroaching upon 40% slopes. Because this corridor itself is characterized by slopes in the 30% range, it is questionable whether enough width exists to allow the design of a switchback roadway that would meet King County Road Standards requirements for maximum grade. On the other hand, if lot development is concentrated on the northern half of the property where the view potential is less, the Applicants will need to relocate their proposed well sites further south. Other design issues that will need to be addressed include the probable necessity to engineer road crossings over the intermittent streams.
9. The short plats have obtained a commitment for sewer service from the City of Issaquah. The City is also the water purveyor for this area, but has declined to serve the property. The City supports the development of interim wells on the site subject to a requirement for later water service hookup when and if such becomes available to the neighborhood. In addition to the site design issues identified above, at least one of the currently proposed well sites may need to be relocated due to its projected placement on a steep slope near a stream.

CONCLUSIONS:

1. Staff has identified two potential rezone approval standards within KCC 20.24.190 that may apply to this proposal. The first is found at KCC 20.24.190 B and provides for rezone approval where the reclassification is of a type that is specifically contemplated within an adopted subarea plan or area zoning provision. A second potential standard is provided at KCC 20.24.190 D and allows an applicant to demonstrate the existence of changed conditions that were not anticipated or contemplated within the prior planning or zoning.
2. The staff report suggests that the Applicants comply with the standards set out at both KCC 20.24.190 B and D. But this viewpoint is problematic in that these two standards tend to be mutually exclusive. The subsection B standard applies to the situation where the reclassification circumstances have been anticipated and provided for within the regulatory scheme, while the subsection D standard looks to the opposite situation where the changes in factual circumstances were not contemplated by earlier regulatory enactment.
3. Neither the Applicants nor County staff have made a case for the application of KCC 20.24.190 D to this proposal. The point of reference for this analysis is the enactment of the "last previous area zoning," which in the instant case is presumably the 2000 Comprehensive

Plan Update. No one has attempted to demonstrate that circumstances since the adoption of the 2000 Update have changed sufficiently to justify the reclassification, nor has anyone shown that the increase in urban density that would result from the reclassification would meet Comprehensive Plan policies U-118 through U-123 as also required under subsection D.

4. On the other hand, the requirements of KCC 20.24.190 B are clearly met by this proposal. Development condition NC-P1 provides for reclassifications of properties once a first master plan for village development in the Cougar Mountain subarea has been approved the County. This occurred in the late 80's with North Village. Thus, such reclassification may be approved upon a demonstration that it will be consistent with applicable County plans and policies, compatible with the land uses of the approved master plan, and public facilities are available to the site. Turning to the first requirement, Comprehensive Plan Policy U-115 supports the imposition of the low density R-1 urban designation as a tool to protect sensitive environmental features and to link such features to habitat and open space networks. This function of the R-1 zone is appropriate for the Applicants' property due to its slopes and streams and its adjacency to the Cougar Mountain Park. In like manner, there can be no doubt about the proposed reclassification's compatibility with the land use pattern for North Village. The Applicants' site is separated from North Village by the Southeast 60th Street corridor, which was excluded from the MPD overlay. Thus the Applicants' property is buffered from North Village by existing development along Southeast 60th Street and has no impact on North Village land use patterns.
5. KCC Chapter 21A.28 defines the public facilities required to support residential development as being sewer, water, surface water management, roads and access, fire safety and schools. As noted, the Applicants' short plat applications currently under review present unresolved problems as to the location and design of site access, appropriate well locations and the impact on steep slopes and streams of the foregoing facilities. Thus, assurance that public facilities meeting County standards will be available to the site can only be obtained by subjecting the rezone approval to the condition proposed by staff that the reclassification to R-1 shall become effective after final approval of the short plats has been conferred. Absent this proviso, the requirement of development condition NC-P1 that public facilities be available to the site as a precondition of reclassification cannot be met.
6. The foregoing analysis precludes granting the Applicants' request that the condition tying reclassification effectiveness to short plat approval be dropped. Assuring the availability of required public facilities is a necessary component of rezone review. This is emphasized not only within development condition NC-P1, but also in KCC Chapter 21A.28 which requires that the timing of installation for water, sewer, drainage and fire safety improvements be spelled out in the ordinance approving the rezone. Finally, similar language is found in Comprehensive Plan Policy U-120, which links increases in residential density in the Urban Area to the provision of adequate urban services and the mitigation of adverse environmental impacts. In short, the County's regulatory scheme makes quasi-judicial rezone approval dependent upon the review of contemporaneous site development proposals and does not encourage the approval of a rezone divorced from a consideration of its consequences. A rezone in the abstract of the type desired by the Applicants can only be obtained through the legislative process.
7. The property is potentially zoned for the reclassification requested and conditions have been met or can be placed upon the application which insure that such classification is appropriate.

8. The public necessity, convenience and general welfare will be served by the proposed reclassification.
9. The conditions of approval recommended herein, including dedications and easements, will provide public improvements necessary to serve the reclassified property; are required to make the reclassified property reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

RECOMMENDATION:

APPROVE the reclassification of the subject parcels to R-1 in lieu of R-1-P, subject to the following condition:

Pre-effective condition:

1. The R-1 zoning shall become effective concurrently with the final approval of the short subdivision applications. In the event that short subdivision final approval is not issued within the time prescribed by KCC 19A.12.040, the rezone application shall become null and void, and the zoning shall remain R-1-P.

ORDERED this 3rd day of June, 2002.

 Stafford L. Smith
 King County Hearing Examiner

TRANSMITTED this 3rd day of June, 2002, to the following parties and interested persons:

Shelley Davison
 4727 - 193rd Avenue SE
 Issaquah WA 98027

Joel Gray
 Montreaux Homeowners Association
 18039 NW Varese Court
 Issaquah WA 98027

Tim Holderman
 Sound Engineering
 1019 Pacific Ave. #960
 Tacoma WA 98402

Muckleshoot Indian Tribe
 Attn: Permit Reviewer
 39015 - 172nd Ave SE
 Auburn WA 98092-9763

Robert Perry
 17302 SE 60th Street
 Bellevue WA 98006

David and Janet Quick
 6235 182nd Avenue SE
 Issaquah WA 98027

Teri Reineke
 17826 SE 60th Street
 Bellevue WA 98006

Nicholas Scholten
 9407 173rd Court East
 Puyallup WA 98375

Charles Wexler
 5519 Paseo Del Lago E, #2H
 Luguna Woods CA 92653

Greg Borba
 DDES/LUSD
 MS OAK-DE-0100

Mark Mitchell
 DDES/LUSD
 Current Planning
 MS OAK-DE-0100

Tom Slade
 DDES/Current Planning
 MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before June 17, 2002*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before June 24, 2002*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1027, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE MAY 30, 2002, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02TY401; COUGAR RIDGE.

Stafford Smith was the Hearing Examiner in this matter. Participating in the hearing were Tom Slade, representing the Department; Tim Holderman, engineer for the Applicants; and Robert Perry, Nicholas Scholten and Shelley Davison, Applicants.

The following exhibits were offered and entered into the record:

- | | |
|---------------|---|
| Exhibit No. 1 | DDES staff report to the examiner, dated May 30, 2002 |
| Exhibit No. 2 | Rezone application, received January 3, 2002 |
| Exhibit No. 3 | SEPA checklist, dated October 26, 2001, and the DNS, dated March 27, 2002 |
| Exhibit No. 4 | Preliminary short plat map |
| Exhibit No. 5 | Assessor's map SW 19-24-6 |
| Exhibit No. 6 | DDES file L02TY402 |
| Exhibit No. 7 | 8 ½ X 11 zoning map with subject property highlighted |