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EXHIBIT 159  
PAGE 1 OF 50

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CITY OF WOODINVILLE  
DEVELOPMENT SERVICES

BEFORE THE HEARING EXAMINER  
CITY OF WOODINVILLE

In the Matter of Rezone and Preliminary  
Plat Application for  
  
WOOD TRAILS and  
MONTEVALLO

CITY FILE NOS.  
ZMA2004-053  
PPA2004-054 and  
ZMA2004-094  
PPA2004-093

EVIDENCE SUMMARY AND  
ARGUMENT BY CONCERNED  
NEIGHBORS OF WELLINGTON  
IN OPPOSITION TO REZONE  
AND PLATS

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EVIDENCE SUMMARY  
AND ARGUMENT - 1

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I. INTRODUCTION

Concerned Neighbors of Wellington (CNW) provides this summary of evidence and closing argument to assist the Hearing Examiner in making decisions on the applications by Phoenix Development for rezones and preliminary plats for the Wood Trails and Montevallo proposals. Because the Hearing Examiner has received evidence on both projects during the course of the public hearings on this matter, we ask that this memorandum be made a part of the record in each case.

The Hearing Examiner has before him not only two separate properties for consideration, but two very separate and distinct decisions to be made. The Montevallo and Wood Trails proposals are first and foremost for rezones from R-1 to R-4. Though preliminary plat proposals have been made, both are structured to R-4 densities and accordingly are completely dependent upon approval of the rezone applications. In the preliminary stages of these hearings, CNW has made arguments as to why the rezone issue must be heard before the decision on the plats and why the decisions on Montevallo and Wood Trails must be consolidated. We will not repeat those arguments here, but CNW adheres to these positions.

The purpose of this memorandum is to summarize evidence and legal arguments regarding both the rezone and the plat. As noted here, the rezones are inconsistent with applicable standards established by the City of Woodinville in its codes and its comprehensive plan. Because of this, the rezone proposals must be rejected. If the Examiner concludes that the rezones should be denied, there is no basis for further review of the preliminary plats and no decision should be made on them because of their clear inconsistency with zoning.

If the Examiner concludes, *arguendo*, that the rezones should be granted, or that the plats should be considered at all, CNW urges the Examiner to deny the plats. As will be shown herein, the plat proposals fail in numerous respects to meet

1 minimum standards for preliminary plats under Woodinville codes. The plats lack  
2 sufficient detail, analysis and study under Woodinville codes to be considered and  
3 even if the zoning is approved, remand is required for further articulation.

4 Based on the foregoing, this memorandum will be divided into two general  
5 parts, the first dealing with rezone issues and the second with platting issues.

6 **II. BACKGROUND FACTS**

7 The Wood Trails proposal requests the rezone of a 38.7 acre parcel into 66  
8 single family residential lots. The Montevallo proposal is to divide a 16.48 acre  
9 parcel into 66 single family residential lots with surplus density proposed to be  
10 transferred from the Wood Trails site to this property.

11 Both properties are located in what is an exclusively single family residential  
12 area in the northwest corner of the city. Historically, this area has been platted into  
13 a variety of large lots, averaging just under an acre in size.

14 The Wood Trails proposal is located on a steep westerly facing hillside and  
15 the Montevallo proposal has an extensive wetland on its west side. Both properties  
16 are accessed by several substandard east-west roads leading into the only  
17 collection street access at 156<sup>th</sup> Avenue Northeast.

18 **III. REZONING: BOTH APPLICATIONS FOR REZONING SHOULD  
19 BE DENIED.**

20 **3.1 Burden of Proof Is on the Applicant for a Rezone**

21 The subject proposal is a rezone from R-1 to R-4. As described in the background  
22 facts, the R-1 designation arose from the original comprehensive plan adopted in  
23 1996. The R-1 zone has not been modified since then nor has the city engaged in  
24 an all-inclusive city wide comprehensive plan revision.

25 The general rules for rezones are stated by our courts as follows:

- 26 The following general rules apply to rezone applications:  
27 (1) there is no presumption of validity favoring the action of  
28 rezoning; (2) the proponents of the rezone have the burden of

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proof in demonstrating that conditions have changed since the original zoning; (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare. *Parkridge v. Seattle*, 89 Wn. 2d 454, 462, 573, P.2d 359 (1978).

*Bjarnson v. Kitsap County*, 78 Wn. App. 840, 845, 899 P.2d 1290 (1995). *Bjarnson* also lists the key criteria to be applied:

In applying the changed circumstances test courts have looked at a variety of factors, including: changed public opinion, changes in land use patterns in the area of the rezone, and changes on the property itself.

78 Wn. App. at 846-847. See also *Citizens for Mount Vernon v. City of Mount Vernon* 133 Wn. 2d 861, 875, 947 P.2d 1208 (1997). See *Friends of the Law v. King County*, 123 Wn. 2d 518, 529, 869 P.2d 1056 (1994) ("The applicant bears the burden of complying fully with applicable land use requirements. *Taylor v. Stevens Cy.*, 111 Wn. 2d 159, 169-70, 759 P.2d 447 (1988).")

In applying these factors here, it is clear that there are no changed circumstances.

1) PUBLIC OPINION. Public opinion has strongly changed since 1996 in favor of retaining, not eliminating, the R-1 zone in this area. The numerous comments on the EIS (substantially all in support of retaining the R-1 zone) as well as the attendance at the public hearings on the two rezones essentially indicate no public support for the proposed rezone.

2) CHANGES IN LAND USE PATTERNS. There has been no change in land use in the local area. As described in materials submitted, the Wellington neighborhood has a long established pattern of larger lot, single family residential uses. The neighborhood consists of subdivisions developed over several years and demonstrates a very stable use for at least the past 20-30 years. This is true as well for the adjacent land uses in all directions.

What has changed in the city is that it is clearly meeting its obligations for

1 new housing units. See Wood Trails Starr Report, page 5 (Wood Trails Exhibit 1).  
2 Zoning changes and development in other parts of the city have created housing  
3 opportunities in commercial zones and tourist business zones and new housing is  
4 being developed there. Indeed, it is "the City's longstanding goal to develop  
5 pedestrian-oriented development in and around the commercial areas of the city  
6 that accommodate over 3 dozen wineries." Ordinance 431, §13(b), Wood Trails  
7 Exhibit 83

8 3) CHANGES ON THE SUBJECT PROPERTY. The subject property has  
9 not changed over the years. Both the Montevallo and Wood Trails properties have  
10 been in the same uses for at least 30 years. Indeed, the entire neighborhood is  
11 stable, with well maintained housing stock.

12 Significantly, there are also no changes in public services to the property.  
13 Indeed, sewer service has been available on adjacent property to the west for at  
14 least 20 years, well before the current zoning on the property was adopted.

15 **3.2 The Subject Rezone and Plat Are Not Vested Against Any**  
16 **Changes in Regulations.**

17 The Wood Trails staff report (Exhibit 1) asserts, page 3, that both the plat  
18 and rezone are "vested to the codes and regulations in effect on July 8, 2004." A  
19 similar statement is made for the Montevallo plat and rezone, with a supposed  
20 vesting date of November 23, 2004. These statements are incorrect under the law  
21 and the Hearing Examiner should apply current codes and regulations.

22 The rule in the state of Washington is that vested rights do not arise with  
23 respect to rezone requests. This is plainly stated in the leading Washington case:

24 Contrary to the respondents' contention, the "vested rights" doctrine  
25 is not applicable. The Teeds' request was for a rezone of their  
26 property. "Actions are characterized as rezoning when there are  
27 specific parties requesting a classification change for a specific tract."  
28 *Cathcart-Maltby-Clearview Comm'ty Coun. v. Snohomish Cy.*, 96 Wn.  
2d 201, 212, 634 P.2d 853 (1981). Although rezoning actions are  
basically adjudicatory, *Fleming v. Tacoma*, 81 Wash.2d 292, 299, 502

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P.2d 327 (1972), and are not given the presumption of validity given to comprehensive land use plans and promulgatory zoning regulations, they will be upheld only if there is substantial evidence indicating that the rezone furthers the public welfare and that changed circumstances warrant its passage. *Cathcart*, 96 Wn. 2d at 211, 634 P.2d 853; *Hayden v. Port Townsend*, 93 Wn. 2d 870, 613 P.2d 1164 (1980); *Parkridge v. Seattle*, *supra*. Moreover, a rezone will not be disturbed by the courts absent arbitrary and capricious conduct by the local legislative tribunal, see *Cathcart v. Snohomish Cy.*, *supra*; i.e., conduct that is willful and unreasonable without consideration and in disregard of facts or circumstances. *Barrie v. Kitsap Cy.*, 93 Wn. 2d 843, 613 P.2d 1148 (1980).

Courts simply do not possess the power to amend zoning ordinances or to rezone a zoned area, and they cannot and should not invade the legislative arena or intrude upon municipal zoning determinations, absent a clear showing of arbitrary, unreasonable, irrational or unlawful zoning action or inaction.

*Bishop v. Houghton*, 69 Wn. 2d 786, 792-93, 420 P.2d 368 (1966). The situation raised in the instant appeal is clearly not the type of ministerial action which warrants the granting of mandamus contemplated under the "vested rights" doctrine.

*Teed v. King County*, 36 Wn. App. 635, 644-645, 677 P.2d 179,184 - 185 (1984).

This rule is repeated in a later case:

But vested rights generally do not apply to rezoning applications because at that point no decision has been rendered. *Teed v. King County*, 36 Wn. App. 635, 644, 677 P.2d 179 (1984); Washington State Bar Ass'n, Real Property Deskbook, Vol. VI, § 97.8(2)(g), at 97-46 (3d ed.1996).

*Hale v. Island County*, 88 Wn. App. 764, 771, 946 P.2d 1192, 1195 (1997).

Accordingly, the applicant rezone applications are not vested against changes in underlying laws.

As applied here, on March 12, 2007, the City of Woodinville City Council enacted Ordinance 431 (Wood Trails Exhibit 84) which amended WMC 21.04.080(1)(a) by deleting the sentence that reads: "Developments with densities less than R-4 are allowed only if adequate services cannot be provided." Since the rezone application is not vested against this modification in city codes, Ordinance 431 applies to this application and demonstrates that this proposal cannot proceed.

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**3.3 The Rezone Applications Do Not Meet the General Rezone Criteria in WMC 21.44.070.**

The City of Woodinville zoning code sets forth three general criteria for rezone approval in WMC 21.44.070. These are:

A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the Comprehensive Plan and applicable functional plans at the time the application for such zone reclassification is submitted, and complies with the following criteria:

- (1) There is a demonstrated need for additional zoning of the type proposed
- (2) The zone reclassification is consistent and compatible with uses and zoning of the surrounding properties.
- (3) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

(Emphasis supplied). The code is clear that the burden of proof is on the applicant to meet these criteria.

As will be described below, the applicant has not met his burden of proof.

**3.3.1 The Growth Board Decision In *Hensley v. City of Woodinville* Is Not Applicable to These Proceedings.**

In its hearing and reply memoranda, the applicant places much reliance on the decision of the Growth Management Hearings Board decision in Hensley v. City of Woodinville, Case No. 96-3-0031 (February 25, 1997). This reliance is misplaced for several reasons.

First, the Board held that the city was in compliance with all terms of its 1996 comprehensive plan (Ordinance #157) except for two matters, one being Land Use Policy 3.6. See page 12 of decision (Wood Trails Exhibit 140). Thus the city zoning code as it existed at that time was consistent with the GMA.

Second, on October 10, 1997, the Board entered its Finding of Compliance in the *Hensley* case in which it determined the city had complied with the Board's order by deleting Ordinance #157. See Attachment 1 hereto. The City made no changes to other elements of its comprehensive plan or zoning code to achieve

1 compliance with the Board's February 25, 1997 order.

2 Third, there has never been a challenge to the terms of the City's zoning  
3 code, particularly those provisions that CNW cites in Section 3.5 and 3.6 in this  
4 Evidence Summary. Thus the provisions of the code that recognize the  
5 appropriateness of R-1 zoning "in well established subdivisions of the same density"  
6 and the requirement that R-4 zones be in areas that are "predominantly  
7 environmentally unconstrained" (WMC 21.04.080(2)) are prima facie consistent with  
8 GMA and cannot be collaterally challenged by Phoenix. If Phoenix considers these  
9 provisions inconsistent with GMA it should challenge them before the Board, or ask  
10 that the zoning code be amended, but it has done neither, even though it has  
11 owned a large portion of the Wood Trails site for more than 20 years.

12 Fourth, as described in Section 3.5.1 hereof, after the Board's decision in  
13 Hensley on February 25, 1997, the legislature adopted RCW 36.70A.3201, the  
14 purpose of which was to increase the discretion of local governments in adopting  
15 comprehensive plan and applying local conditions. Accordingly, the authority of  
16 Hensley is questionable in any event.

17 Since any concerns with the City's comprehensive plan and zoning code  
18 have been resolved by a finding of compliance by the Growth Board, and there have  
19 been no subsequent challenges, the Hearing Examiner must apply all ordinances  
20 of the city as written.

21 **3.3.2 There Is No Demonstrated Need for the Wood Trail or**  
22 **Montevallo Rezones.**

23 The first of the three criteria for the rezoning of property at WMC 21.44.070  
24 is: "A) There is a demonstrated need for additional zoning of the type proposed."  
25 This criteria is not met. As the staff report concludes, a combination of current  
26 zoning, together with pending and issued permits, demonstrates that the City is  
27 meeting its GMA 20 year growth projection of 1,869 dwelling units. Wood Trails

1 Staff Report, (Wood Trails Exhibit 1, page 5).

2 Under the GMA, local governments are required to cumulatively apply the  
3 zoning in the community to provide “sufficient capacity of lands suitable for  
4 development”:

5 **36.70A.115. Comprehensive plans and development regulations  
6 must provide sufficient land capacity for development**

7 Counties and cities that are required or choose to plan under RCW  
8 36.70A.040 shall ensure that, taken collectively, adoption of and  
9 amendments to their comprehensive plans and/or development  
10 regulations provide sufficient capacity of land suitable for  
11 development within their jurisdictions to accommodate their allocated  
12 housing and employment growth, as adopted in the applicable  
13 countywide planning policies and consistent with the twenty-year  
14 population forecast from the office of financial management.

15 (Emphasis supplied). In the present case, the term “need” must refer to the “need”  
16 to provide sufficient lands to accommodate allocated housing growth.<sup>1</sup>

17 In its hearing memorandum the applicant Phoenix takes issue with the staff  
18 description of “demonstrated need” by arguing that “demonstrated need” under  
19 Section 21.44.070 of the Woodinville code equates to “market demand.” This is  
20 an incorrect reading of applicable law.

21 “Need” in these circumstances must be considered as defined in the Growth  
22 Management Act. For example, “need” is defined as a part of the housing element  
23 required in GMA compliant comprehensive plans in RCW 36.70A.070(2). This  
24 section states:

25 a housing element ensuring the vitality and character of established  
26 residential neighborhoods that: a) includes an inventory and analysis  
27 of existing and projected housing needs that identifies the number of

28 <sup>1</sup>The applicant has submitted materials that suggest need is related to market  
factors and suggests that potential home owners would buy these homes. While  
CNW will respond to these allegations in more detail before the record closes, it is  
obvious that any new housing in the central Puget Sound area has a market.  
Accepting the applicant’s view would mean that there is a need for any kind of  
housing, effectively making the provision meaningless; this is an absurd reading of  
this section of the code.

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housing units necessary to manage projected growth; b) includes a statement of goals, policies, objectives and mandatory provisions for the preservation, improvements and development of housing, including single family residences; c) identifies sufficient land for housing, including, but not limited to government-assisted housing, housing for low income families, manufactured housing, multi-family housing and group homes and foster care facilities; and d) makes adequate provisions for existing and projected needs of all economic segments of the community.

As may be seen, the question of "housing needs" is a matter given over to local governments as a part of the determination to "manage projected growth." In the city, identification of both projected growth and the means to manage that growth is set forth in the comprehensive plan which plan was not challenged in any manner by Phoenix when it was adopted.

Also under the Growth Management Act , RCW 36.70A.110(2) identifies need in the context of growth projections:

2) Based upon the growth management population projections made for the county by the Office of Financial Management, the county and each city within the county shall include areas in density sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20 year period . . .

(Emphasis supplied.) Note that GMA is not specific about what intensity of zoning is required. As may be seen from the staff reports on both Wood Trails and Montevallo, the City has already identified "areas and densities sufficient to permit the urban growth" projected over the 20 year period. The City's determination that these areas are sufficient shows that there is a lack of any kind of "demonstrated need" for additional densities, including R4.

Based on the foregoing, the argument that "demonstrated need" under WMC 21.44.070 should be read to be "market demand" is an erroneous determination.

Phoenix has apparently undertaken electronic legal search for other cases using the term "demonstrated need" and has cited them at pages 4-6 of its memorandum. However, these few cases illustrate why the term "demonstrated

1 need," as interpreted by Phoenix, does not apply here.

2 Indeed, each of the cases cited by Phoenix references not market demand,  
3 but shortages in the commodity analyzed. Thus in *Trisko v. City of Waite Park*, 566  
4 NW 2<sup>nd</sup> 349 (Minn. Ct. App. 1997) the Minnesota Court of Appeals dealt with the  
5 denial of a conditional use for a rock quarry. But as Phoenix admits, without the  
6 new rock quarry there would be insufficient granite for public purposes, creating a  
7 shortage. The same is true in *1000 Friends of Oregon v. Marion County*, 116 Ore.  
8 App. 584, 842 P.2d 441 in which the court identified a shortage of RV spaces  
9 because customers were being turned away. In *Blaker v. Zoning and Planning*  
10 *Commission of the Town of Fairfield*, 212 Conn. 471, 484, 562 Atl.2d 1093 (Conn.,  
11 1989) the court again focused on a limited market of affordable housing. The same  
12 is true of *Eveline Township v. H&D Trucking Company*, 81 Mich. App. 25, 448  
13 N.W.2d 727 (Mich. Court of Appeals 1989). The *Eveline Township* case dealt with  
14 a specific, and frequently litigated provision of Michigan state law that stated:

15 A zoning ordinance or zoning decision shall have the effect of totally  
16 prohibiting the establishment of a land use within a township in the  
17 presence of a demonstrated need for that land use within either the  
18 township or the surrounding area within the state, unless there is no  
19 location within the township where the use may be appropriately  
20 located, or the use is unlawful.

19 In that case the question was whether or not a port facility proposed by the applicant  
20 was properly denied by the local township. However, in that case the evidence was  
21 that "there were no available port sites in the area and that the action of the  
22 township ordinance regarding port sites . . . does have the effect of totally  
23 prohibiting commercial ports like defendant's from the township." 448 N.W. 2d at  
24 730.

25 These cases highlight the fact that each case either deals with the  
26 identification of shortages or a complete denial of a use within the area. In the  
27 instant case, however, all that Phoenix has demonstrated, if it has, is that there is

1 a "market demand" for R-4 housing. That there is market demand does not mean  
2 that there are shortages of such uses or that such uses are being excluded from the  
3 city of Woodinville.

4 In addition, there is a pervasive market for housing in the region and in the  
5 state as a whole. Material submitted by CNW during the hearing, and through the  
6 extended public comment period, indicates that there a substantial supply of R-4  
7 zoned property and homes available in Woodinville and the nearby community and  
8 no shortage exists. If, for example, Phoenix's application was for industrial zoning,  
9 and it was demonstrated that no industrial zoning was allowed in the city or that  
10 there was a shortage of industrial land, the Phoenix argument might make sense.

11 In summary, demonstrated need relates to complying with growth  
12 management requirements, not market need as claimed. Because the City of  
13 Woodinville has provided sufficient space to more than meet its housing goals  
14 under the GMA, there is no "demonstrated need" for increased densities over the  
15 20 year planning period described by GMA.

16 **3.3.3 The Zone Reclassifications of Wood Trails and Montevallo**  
17 **are Inconsistent and Incompatible with Uses and Zoning**  
18 **of the Surrounding Properties.**

18 As was described at the hearings the Wood Trails and Montevallo proposals  
19 are inconsistent and incompatible with uses and zoning of the surrounding  
20 properties.

21 All properties that surround the Wood Trails and Montevallo proposals are  
22 zoned R-1 and there are no pending proposals to change these properties. These  
23 surrounding properties are currently developed with single family homes on lots that  
24 average just less than one acre. As shown in the CNW Notebook (Exhibit 74) at the  
25 "Well-Established Subdivision of the Same Density" section, principal development  
26 of this area took place in the 1970s and 1980s and is unchanged since that time.

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1 These conclusions are confirmed and reinforced by the staff report for  
2 Ordinance 431, which concluded:

3 an evaluation of existing neighborhoods in the R-1 area . . . found that  
4 several neighborhoods housing stock, character and vitality would  
best be preserved by lower density zoning.

5 Staff Report for Ordinance 431, Wood Trails Exhibit 71. The background  
6 information on neighborhood character from the sustainable development project  
7 is reproduced in the CNW Notebook (Exhibit 74) in the "Well Established  
8 Subdivisions" section in Attachment B.

9 **3.3.4 The Property Is Practically and Physically Unsited for the  
10 Uses Allowed in the Proposed Zone Reclassification.**

11 Neither the Wood Trails nor the Montevallo properties are suited for the uses  
12 proposed under the rezone, i.e. subdivisions of densities that are R-4.

13 One of the principal issues, particularly with the Wood Trails proposal is the  
14 serious issue with geologic hazard areas. That issue will be discussed in the  
15 following sections of this memorandum in detail as this is an area that is  
16 "environmentally constrained." As that section of the brief points out, the existence  
17 of large areas of landslide and erosion hazard areas make the Wood Trails rezone  
18 area one that is not "practically or physically suited" for more intense development  
that might be permitted in an R-4 rezone.

19 In addition, there are other constraints that make the area unsuitable for  
20 more dense development.

21 First, there is no public transportation to the area. There is no transit service  
22 anywhere near either the Wood Trails or the Montevallo proposals; the nearest  
23 minor arterial, 156<sup>th</sup> Avenue N.E. has no bus service. Residents in any new R-4  
24 housing will be completely dependent on automobiles for all work, shopping,  
25 recreation and other trips.

26 Second, the roads in the area are substandard. As outlined in detail in

1 Montevallo Exhibit 74 in the Infrastructure Section, transportation subsection, all of  
2 the local access roads, N.E. 195<sup>th</sup>, N.E. 198<sup>th</sup>, N.E. 201<sup>st</sup>, and N.E. 202<sup>nd</sup> do not  
3 meet commonly accepted transportation engineering standards, having been  
4 planned and constructed 20-30 years ago. The material on transportation was  
5 prepared by Roger J. Mason, a licensed professional transportation engineer and  
6 Vice President with CH2M Hill. See the Resume' section of Montevallo Exhibit 74  
7 (at the end of Volume 2). Mr. Mason also testified at the March 16 hearing  
8 summarizing the notebook material. The Wood Trails rezone will put increased  
9 volumes on these roads.

10 Third, 156<sup>th</sup> Ave N.E., the only north-south arterial in the area, has serious  
11 engineering problems as well as shown in Montevallo Exhibit 74 in the Infrastructure  
12 Section, transportation subsection, also prepared by Mr. Mason. This route is also  
13 substandard with below standard sight distance problems. There are also serious  
14 congestion problems on 156<sup>th</sup>, where traffic volumes are growing at rates  
15 substantially higher than expected; this was discussed extensively at the hearing.

16 Fourth, the same Ordinance 431 staff report noted that:  
17 An R-4 rezone of the subject area would likely have a negative  
18 effect on the City's resources in the context of capital improvement  
19 Staff Report for Ordinance 431, page 8 as attached to Montevallo Exhibit 71. This  
20 confirms that providing the necessary transportation infrastructure will be expensive  
21 for the city.

22 Fifth, one of the goals under GMA is to assure the availability of housing  
23 within the community that is diverse.

24 (4) Housing. Encourage the availability of affordable housing to all  
25 economic segments of the population of this state, **promote a variety**  
26 **of residential densities and housing types**, and encourage  
preservation of existing housing stock.

27 RCW 36.70A.020. As the staff report for Ordinance 431 states:

1 Changing R-1 to R-4 is counter to the City's economic and residential  
2 growth plans to encourage housing in the downtown where people  
3 can live in proximity to work opportunities, shopping, mass transit and  
4 other services, which not only supports the local economy, but also  
5 reduces vehicle trips.

6 In addition, the proposed rezones are in an area where there is no transit  
7 service of any kind and no plans for provisions for transit. Thus all residents in the  
8 new R-4 would be utterly and complete dependent on private vehicles for  
9 transportation. Further, there are no nearby facilities for shopping or recreation  
10 which are accessible by walking (indeed there are no sidewalks in the  
11 neighborhood). The lack of transit and pedestrian facilities indicates there is a lack  
12 of "adequate . . . needed public facilities and services" under this criteria and  
13 accordingly the proposals are not suitable for rezoning.

14 In summary, the Wood Trails and Montevallo properties are not practically  
15 and physically suited for R-4 uses and hence do not qualify for these rezones.

16 **3.4 The Rezone Proposals Are Spot Zones.**

17 The Wood Trails and Montevallo proposals are illegal spot zones. The  
18 applicants have selected a 16.48 acre parcel for rezoning from R-1 to R-4 at  
19 Montevallo. The proposal will include the capability for building 66 homes with  
20 possible density transfers, making the effective zoning R-6.

21 The Montevallo proposal is located in an area surrounded on all sides by low  
22 density (R-1) single family zoning. Though not identified in the staff report or FEIS,  
23 the zoning to the north in Snohomish County is rural, five acre zoning.

24 Spot zoning has been identified and condemned by Washington courts:

25 The concept of spot zoning as an evil in the field of municipal growth  
26 is well recognized by nearly all authorities.

27 'Spot zoning is an attempt to wrench a single lot from its  
28 environment and give it a new rating that disturbs the tenor of  
the neighborhood, and which affects only the use of a  
particular piece of property or a small group of adjoining  
properties and is not related to the general plan for the  
community as a whole, but is primarily for the private interest

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of the owner of the property so zoned; and it is the very antithesis of planned zoning. It has generally been held that spot zoning is improper, and that one or two building lots may not be marked off into a separate district or zone and benefitted by peculiar advantages or subjected to peculiar burdens not applicable to adjoining similar lands.' 101 C.J.S. Zoning § 34.

A well supported statement is also found in 2 Metzenbaum, Law of Zoning (2d ed.) chapter X-m-(5):

'Spot Zoning' is not usually favorably regarded, because, in too many instances, such practice has been employed in order to aid some one owner or parcel or some one small area, rather than being enacted for the general welfare, safety, health and wellbeing of the entire community.

\* \* \*

"Spot zoning' merely for the benefit of one or a few or for the disadvantage of some, still remains censurable because it is not for the general welfare...'

*Pierce v. King County*, 62 Wn. 2d 324, 338-339, 382 P.2d 628 (1963). A later Washington case provides a concise definition and prohibition of spot zoning:

Spot zoning is an action by which an area is carved out of a larger area and specially zoned for a use totally different from, and inconsistent with, the surrounding land and not in conformance with the comprehensive plan. *Save a Neighborhood Env't v. City of Seattle*, 101 Wash.2d 280, 286, 676 P.2d 1006 (1984). A spot zone grants a discriminatory benefit to some landowners to the detriment of their neighbors or of the community at large. *Id.* (quoting *Save Our Rural Env't v. Snohomish County*, 99 Wn. 2d 363, 368, 662 P.2d 816 (1983)).

*Henderson v. Kittitas County*, 124 Wn. App. 747, 757-758, 100 P.3d 842, 847 (2004).

For the Montevallo case, the applicant seeks approval of an upzone of an isolated 16.48 acre property located within a virtual sea of lower density zoning with rural zoning to the north. The city so interprets its codes that the effective zoning on the property, with possible density transfers, is R-5, or five units to the acre.

No effort is made by the applicant, or the city, to include other areas within the rezone. The proposal is a classic spot zone: the isolation of a single ownership for rezoning that is inconsistent with the surrounding area, with no evidence of benefits to the public. If this area is to be considered for rezoning, it should only be

1 in the context of a comprehensive examination of the larger West Wellington area.

2 In this regard, the City Council of the City of Woodinville has recently passed  
3 Ordinance 431 which is included in the hearing record. Wood Trails Exhibit 84.  
4 That Ordinance dealt with the issue of whether the larger area of R-1 zoning in this  
5 area should be rezoned to R-4. The Staff Report for Ordinance 431 (attached to  
6 Montevallo Exhibit 71) and the finding in the Ordinance both indicate a number of  
7 reasons why R-4 is not appropriate for this property, as well as for the whole area.

8 Both rezone proposals are impermissible spot zones and should be rejected.

9 **3.5 Under the Terms of WMC 21.04.080, the Criteria for Residential**  
10 **Zones, the Property Is Correctly Zoned R-1 and Is Not Consistent**  
11 **with Standard for R-4.**

12 The second general criteria for rezones is the standards established for the  
13 various zones under the City of Woodinville code. Here the criteria are set forth for  
14 residential zones in general, and for R-1 and R-4 in particular. As with the general  
15 rezone criteria, the applicant bears the burden of proof to demonstrate consistency  
16 with these requirements.

17 In this section we will first describe the broad discretion that the city  
18 possesses in making planning decisions under the GMA. CNW will then describe  
19 how the Wood Trails and Montevallo properties meet the criteria for R-1 zoning and  
20 how they fail to meet criteria under WMC 21.04.080 for a rezone to R-4.

21 **3.5.1 Local Conditions and Discretion Control the Density of**  
22 **Development, Not a Brightline Arbitrary Standard.**

23 In planning for development within its borders, the City of Woodinville, like  
24 other communities, is primarily responsible for developing plans that best fit the  
25 local community. This is stated in RCW 36.70A.3201 which expresses legislative  
26 intent under the GMA:

27 In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws  
28 of 1997, the legislature intends that the boards apply a more  
deferential standard of review to actions of counties and cities than

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the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

(Emphasis supplied).

This approach is approved in recent Washington cases:

GMA was not intended to be a top-down approach with state agencies (or GMA Boards) dictating requirements to local entities. Thus, in accordance with the legislative language of the act, we have held that the GMA does not prescribe a single approach to growth management. RCW 36.70A.3201; *Viking Props. v. Holm*, 155 Wn. 2d 112, 125-26, 118 P.3d 322 (2005) ("the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county's or city's future rests with that community." (alteration in original) (quoting RCW 36.70A.3201)).

Thus, the GMA is implemented exclusively by city and county governments and is to be construed with the flexibility to allow local governments to accommodate local needs. *Viking Props.*, 155 Wn. 2d at 125-26, 118 P.3d 322.

*Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn. 2d 488, 511-512, 139 P.3d 1096 (2006). (Emphasis supplied).

Accordingly, the Hearing Examiner and City Council must determine what is best for the community, based on all pertinent factors, without applying a rigid "bright line" test for development. As will be shown herein, there is no question that the City is not bound by any bright line test for zoning under GMA. Zoning code, comprehensive plan and rezone criteria demonstrate that the property does not qualify for R-4 zoning, while code criteria for R-1 zoning are met.

**3.5.2 Maintenance of R-1 Zoning Is Appropriate Here Where Large Lot, Well Established Subdivisions Exist.**

1 The Wellington area is the site of well-established residential subdivisions.  
2 These larger lots were created in many cases more than twenty years ago.

3 Code criteria for R-1 zones indicate that such zoning is appropriate where the  
4 property in question "is in well-established subdivisions of the same density. . ."  
5 This provision applies here and indicates that R-1 zoning is appropriate. It is  
6 anticipated that the applicant will either dispute that this is not a valid criteria for  
7 rezoning or ignore the matter entirely. However, the applicant has neither  
8 challenged these criteria before the Growth Management Hearings Board nor asked  
9 the City of Woodinville to change these criteria. As such, they control these  
10 proceedings.

11 Both the Wood Trails and Montevallo proposals are located within a  
12 neighborhood that includes established subdivisions with densities that comport with  
13 the R-1 zone. Montevallo Exhibit 74, the analysis prepared by CNW has an entire  
14 section on this criteria found in the Zoning Section, Buildable Lands Subsection.  
15 This material describes in detail how the Wellington neighborhood is developed with  
16 mature lots of densities consistent with R-1 zoning. This includes aerial  
17 photographs found at pages 15-17 that show the deviation between existing  
18 development and proposed development with R-4 zoning. *Id.* The history of area  
19 subdivision provided in that section demonstrates how subdivisions in the area were  
20 developed over time. It is also significant that areas to the north of both the Wood  
21 Trails and Montevallo proposals in Snohomish County are in that county's rural  
22 area, with five acre minimum lot sizes.

23 It is also important here to recognize the precedential and cumulative effect  
24 the Wood Trails and Montevallo rezone decisions will have. Under these proposals,  
25 sewers will be installed all the way to the Montevallo proposal. Given the isolation  
26 and separation of these proposals in a virtual sea of lower density R-1 zoning, it is

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1 inescapable that there will be no basis to deny other R-4 applications if these areas  
2 are rezoned. Given that the one acre parcel size of existing parcels can easily be  
3 short or long platted into smaller lots, it is likely that individual rezones and short  
4 plats will be sought by property owners seeking to maximize value in their property.  
5 The practical impact of such developments is described in detail in the "Cumulative  
6 and Secondary Impacts" section of CNW's Notebook (Montevallo Exhibit 74). Such  
7 impact will be marked because the Wellington neighborhood has a unified character  
8 featuring preservation of vegetation, privacy, large setbacks and generous open  
9 space on each lot. It is no wonder that the Sustainable Development Study and the  
10 staff report on Ordinance 431 made conclusions supportive of maintaining R-1  
11 zoning, as follows:

- An R-4 up-zone to a large area of the City could have a negative impact on the city image and sense of unique identity, recognized since incorporation as a Woodland Character Community

(Montevallo Exhibit 71, Attachment A, page 17.

-Staff has prepared a study of the existing neighborhoods in the R-1 area and therein found that several neighborhoods' housing stock, character and vitality would best be preserved by lower density zoning

*Id.* page 15.

These comments are confirmed by the verbatim transcript of the March 12, 2007 meeting of the City of Woodinville City Council at which the council followed staff recommendations concerning R-1 zoning. Of particular interest in the transcript are the comments of Cindy Baker in support of continued R-1 zoning.

**3.5.3 Significant Area-wide Environmental Constraints Exist That Prohibit R-4 Zoning.**

The City has criteria for determining residential zoning categories as set forth in WMC 21.04.080(2):

(2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan as follows:

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- (a) The R-1 zone on or adjacent to lands with area-wide environmental constraints, or in well-established subdivisions of the same density, which are served at the time of development by public or private facilities and services adequate to support planned densities;
- (b) The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served at the time of development by adequate public sewers, water supply, roads and other needed public facilities and services; and . . .

(Emphasis supplied). Note that the burden of proof is on the applicant to demonstrate that the property under consideration is “predominantly environmentally unconstrained” to qualify for an R-4 rezone. Here the evidence demonstrates that the rezone proposals, particularly Wood Trails, are not “predominately environmentally unconstrained.” There are multiple environmental constraints for that property as shown by the various critical areas that apply to it as set forth in CNW’s Notebook. In addition the property continues to meet the criteria for R-1, i.e, “lands with area-wide environmental constraints.” For R-1, the code ties two criteria together by an “or” indicating that if either criteria is met the property must be zoned R-1. Note as well that the R-1 zone is not required to actually be on areas of such environmental constraints, rather such land only need to be “adjacent to” such lands. These criteria have been a part of the code since the applicants first owned the property and were never challenged by them.

As to these criteria, the CNW Notebook demonstrates that the properties have broad scale, area wide environmental constraints, most notably geologic limitations for steep slopes, erosion hazards and landslide hazards. This material is found in Section 4 of the CNW Notebook (Montevallo Exhibit 74) under “Critical Areas.” The material here was prepared by Otto Paris, a licensed professional hydrogeologist and geologic consultant (his resume is in the Resume’ section of Montevallo Exhibit 74). Additional materials on this subject were submitted by Robert Harmon, a highly qualified geologist, who also spoke at the hearing. See Wood Trails Exhibit 94.

This section of CNW’s Notebook describes that recent information has

1 concluded that the entire Hillside Drainages Area, which includes the Wood Trails  
2 property, should be classified as a Landslide Hazard area. This is in addition to the  
3 area being identified as an erosion hazard area. These geologic constraints are  
4 “area wide,” extending both to the north and south from the Wood Trails plat.

5 Further, the code requires that there be “adequate roads” to the development.  
6 As described above, and in the CNW Notebook, the roads serving both rezone  
7 proposals are inadequate and substandard to meet current city requirements. The  
8 roads, built 30 or more years ago, have various geometric problems as well as  
9 serious sight distance problems. They have no curbs, gutters or sidewalks. The  
10 rezone proposals are not “served at the time of development by adequate . . . roads  
11 . . .” and accordingly do not qualify for rezoning to R-4.

12 In summary, the Wood Trails proposal is not consistent with the criteria for R-  
13 4 zoning because these lands are not “predominately environmentally  
14 unconstrained.” The Wood Trails property does meet the standard for R-1 because  
15 the property is “on or adjacent to land with area-wide environmental constraints. . .”  
16 The rezone proposal is inconsistent with these criteria and must be rejected.

17 **3.6 The Proposal Is Inconsistent with the Terms of the City of**  
18 **Woodinville Comprehensive Plan.**

19 The final rezoning criteria is whether the proposal is consistent with the terms  
20 of the comprehensive plan as described in WMC 21.44.070, zone reclassification  
21 criteria.

22 A zone reclassification shall be granted only if the applicant  
23 demonstrates that the proposal is consistent with the  
24 Comprehensive Plan

25 As noted, the current zoning of R-1 was adopted pursuant to the current zoning code  
26 and comprehensive plan and is thus presumed correct. The applicant must show  
27 that the proposal is consistent with the comprehensive plan. As will be shown, both  
28 rezones to R-4 are inconsistent with key elements of the comprehensive plan, which

1 support retaining the current R-1 zoning.

2 The significant sections of the comprehensive plan at issue here are as  
3 follows:

4 **A) LU-1.1 Preserve the character of existing neighborhoods in**  
5 **Woodinville while accommodating the state's 20-year growth**  
6 **forecasts for Woodinville.**

7 The very first section of the land use element emphasizes the preservation  
8 of the character of existing neighborhoods. The subject proposals do not preserve  
9 the character of the existing neighborhood for the reasons identified above. As  
10 noted by the sustainable development study, the north Wellington neighborhood  
11 ranks among the most desirable in the city. The "character" of this neighborhood is  
12 best preserved, as described in the sustainable development study and the staff  
13 report on Ordinance 431, "by lower density zoning."

14 Further, as described and admitted by staff, the character of the Wellington  
15 neighborhood can be preserved "while accommodating the state's 20-year growth  
16 forecasts for Woodinville" because according to staff there is sufficient land  
17 available, at suitable densities, to meet projections. Indeed, the planning commission  
18 found that changing R-1 to R-4 is:

19 counter to the City economic and residential growth plans to  
20 encourage housing in the downtown where people can live in proximity  
21 to work opportunities, shopping, mass transit and other services, which  
22 not only supports the local economy, but also reduces vehicle trips.

23 See Montevallo Exhibit 71, staff report for Ordinance 431, §3(b).

24 **B) LU-1.2 Encourage future development in areas:**  
25 **1. With the capacity to absorb development (i.e., areas with**  
26 **vacant or underdeveloped land and available utility, street,**  
27 **park, and school capacity, or where such facilities can be**  
28 **cost effectively provided), and**  
**2. Where adverse environmental impacts can be minimized;**  
**and where such development will enhance the area's**  
**appearance or vitality.**

As noted above, the Wood Trails and Montevallo proposals do not have the

1 capacity to absorb development because of severe, area-wide environmental  
2 constraints, particularly in the form of geologic hazard areas. Further, there is no  
3 "available street capacity" as roads in the area leading to the rezone properties are  
4 substandard and traffic congestion is serious and increasing. This is also an area  
5 that lacks any public transit opportunities.

6 Further, it is clear that the second prong of this criteria (and required because  
7 of the "and" that connects it with the first) is not met. Environmental impacts by way  
8 of road deficiencies, water runoff problems and geologic hazards cannot be  
9 minimized. Further, (and also connected by an "and") the development will not  
10 "enhance the area's appearance or vitality." Note here the development must  
11 "enhance" appearance or vitality, not just minimize harm. Again, the planning  
12 commission has concluded that the upzone "could have a negative impact on the  
13 city's image and sense of unique identify." Ordinance 431, §13(e). The area  
14 preferred by the city for new development is the downtown where there is capacity  
15 to absorb development and where new housing will enhance the area's appearance.

16 C) ***U-1.4 Coordinate with adjacent jurisdictions to ensure  
17 compatible land uses in areas along contiguous  
18 boundaries.***

18 In the instant case, there is no evidence that the city or the applicant  
19 "coordinated" with Snohomish County to ensure "compatible land uses along  
20 contiguous boundaries." Just north of both rezone proposals are rural areas in  
21 Snohomish County, zoning not compatible with proposed small lot developments of  
22 R-4 zoning, which could become even more dense with density transfers. While the  
23 staff has recommended 50 foot buffers with properties in the City, no such buffers  
24 are provided to properties to the north, with rural zoning.

25 D) ***GOAL LU-2: To establish land use patterns, densities, and site  
26 designs that encourage less reliance on single-occupant vehicle  
27 travel.***

1 The proposal is inconsistent with this policy. There are no transit routes that  
2 serve this area and no sidewalks or bicycle routes in place on nearby streets. There  
3 are no nearby shopping, business, job or recreational opportunities.

4 E) **GOAL LU-3: To attain a wide range of residential patterns,  
5 densities, and site designs consistent with Woodinville's  
6 identified needs and preferences.**

6 **Policies**

7 **LU-3.1 Encourage development that complements the existing  
8 residential development patterns in Woodinville's neighborhoods.**

9 **LU-3.2 Preserve the existing natural environment of Woodinville's  
10 neighborhoods.**

11 **LU-3.3 Maintain each residential area as a safe, pleasant, and enjoyable  
12 place to live.**

13 These goals and policies are violated. The proposed R-4 development is in  
14 plain conflict with the adjacent R-1 neighborhoods. The dense development  
15 proposed in the R-4 zones will effectively remove trees and vegetation which does  
16 not "preserve the existing natural environmental of Woodinville's neighborhoods."  
17 These factors are confirmed by the sustainable development study.

18 F) **Goal H -1: To preserve existing housing and neighborhoods and  
19 provide a diversity of housing types that promote housing  
20 opportunities for all economic segments of the City's population.**

21 The proposed rezones do not preserve existing housing and neighborhoods.  
22 As the sustainable development study and Ordinance 431 indicate, maintenance of  
23 R-1 zoning best preserves existing neighborhoods. R-4 rezones, could, in the words  
24 of the planning commission, "have a negative impact on the City's image and sense  
25 of unique identity, recognized since its incorporation as a Woodland Character  
26 community." Due to the densities involved with R-4 zoning, as demonstrated by the  
27 plats filed here, the proposed rezones will remove the woodland character of the  
28 community.

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**G) GOAL CD-1: To promote an image of a visually cohesive community to residents and visitors.**

This goal is violated because the R-4 zoning will create a negative impact on the Wellington community. Currently the Wellington community, in the immediate vicinity, has a solid visual cohesion, characterized by abundant vegetation, large trees, generous street setbacks, privacy, and wildlife in harmony with the neighborhood. The proposed rezones will undoubtedly lead to other rezone requests which will further neighborhood deterioration.

**H) GOAL CD-2: To maintain the Northwest woodland character and heritage of Woodinville. GOAL ENV-6: To promote the preservation of Northwest woodland character.**

This goal is particularly violated as identified in the findings of the planning commission that R-4 rezones in R-1: "have a negative impact on the City's image and sense of unique identity, recognized since its incorporation as a Woodland Character community." See Ordinance 431, §13(3), Wood Trails Exhibit 84.

**I) GOAL T-1: To establish and maintain a transportation system which supports the land use plan and incorporates transportation/land use linkages.**

This goal is not met by the rezone because it places a substantial number of new homes far from any mass transit facilities. In addition, evidence in the hearings demonstrates that existing local access streets and the only collector street in the community are not only substandard, but also suffering from traffic congestion, particularly 156<sup>th</sup> Avenue N.E. Backups and delays are clearly identified and no funding is in the capital improvement plan to remedy the situation. Pedestrian/bicycle facilities in the area are nonexistent.

**J) GOAL ENV-3: To preserve and enhance aquatic and wildlife habitat. ENV-3.3 Maintain a standard of no net loss in the functions and values of sensitive habitat features, including wetlands, streams, lakes and shoreline areas.**

Wildlife is abundant in the current wooded and well vegetated R-1

1 neighborhood as described at the hearing, but will be adversely affected by R-4  
2 housing that will eliminate available habitat. As identified in the CNW Notebook,  
3 Section 2, Infrastructure, Storm Water Drainage (Montevallo Exhibit 74) there will be  
4 obvious impacts on streams and their habitat from increased flows and the  
5 elimination of water infiltration robbing streams of base flows during the dry season,  
6 increasing temperature and adding pollutants. The rezone for the Montevallo  
7 proposal will adversely affect wetlands by increasing impervious surfaces, minimal  
8 pollution treatment and effects on the hydrology of the adjacent wetland. *Id.*

9 **K) GOAL ENV-5: To protect and improve water quality.**

10 **Policies ENV-5.1 Preserve aquifer-recharge areas.**

11 See the foregoing discussion regarding water and adverse impacts on aquifer  
12 recharge due to impervious surfaces.

13 In conclusion, the proposed rezones are in clear conflict with multiple sections  
14 of the City of Woodinville Comprehensive Plan and accordingly must be denied.

15 **3.7 Conclusion re Rezoning.**

16 In this section CNW has proven that the applicant has not met the  
17 requirements for a rezone, in particular:

18 a) the applicant has not met the general rezone criteria of WMC 21.44.070 to  
19 show demonstrated need, the consistency and compatibility with surrounding  
20 properties, and that the properties are practically and physically suited for R-4  
21 zoning;

22 b) that the isolated and piecemeal nature of these separated rezones makes  
23 them illegal spot zones;

24 c) that the applicant has not shown that the residential zone criteria of WMC  
25 21.04.080 is met, including showing that the R-4 zone is on lands that are  
26 "predominately environmentally unconstrained" and have "adequate roads"; further  
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1 that the criteria for R-1 continue to be met, i.e. that the properties are in "well  
2 established subdivisions of the same (R-1) density" and "on or adjacent to lands with  
3 area-wide environmental constraints;"

4 d) the proposals are inconsistent with numerous provisions of the City of  
5 Woodinville Comprehensive Plan.

6 The evidence is overwhelming that none of criteria that the applicant has a  
7 burden to demonstrate are met. The rezones must be denied.

8 **IV. PRELIMINARY PLATS: BOTH APPLICATIONS SHOULD BE DENIED.**

9 As described herein, the plats for both Wood Trails and Montevallo are  
10 dependent on the rezones to R-4 being approved. Since these rezones are  
11 obviously inconsistent with applicable City of Woodinville standards, the plats should  
12 be denied.

13 **4.1 The Plat Applications Are Insufficient**

14 Even if the plats are to be considered, CNW believes that the current  
15 applications and submissions of the applicant are insufficient to provide a basis for  
16 review. In short, the applicant has not met the minimal standards required for review  
17 of a preliminary plat and as such the plat proposals should be returned to the  
18 applicant to provide full information.

19 At the outset, the plats cannot be approved because they are inconsistent with  
20 underlying zoning. While the Hearing Examiner has the rezone matters before him,  
21 he only makes recommendations for approval or disapproval to the City of  
22 Woodinville City Council. Accordingly, if a decision is made on the plat proposals  
23 now, the proposals will be inconsistent with the underlying zoning since the plats are  
24 entirely dependent on the R-4 rezone. Thus the Hearing Examiner cannot make the  
25 required "formal written finding that the proposed subdivision is in conformity with any  
26 applicable zoning ordinance or other land use controls which may exist." RCW

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1 58.17.195 (Emphasis supplied). Since that "formal finding" cannot be made the plat  
2 applications cannot be approved.

3 Further, the applicant breezily suggests that all issues can be resolved -  
4 *manana* - during engineering review of the plat. This is a fine outcome for the  
5 applicant because it allows it to skate through the process and work out important  
6 details after opportunity for public comment and review have passed and after the  
7 issues are subject to scrutiny by the Hearing Examiner and the City Council.

8 A) NO ACCURATE PLAT DRAWINGS.

9 At the last minute, the applicant proposed changes to plat drawings and  
10 presented rough sketches of lots. However, these sketches do not meet minimum  
11 requirements for a preliminary plat drawing, which must at least show the lot  
12 dimensions. As provided in the city code, all proposed preliminary plats must be  
13 surveyed:

14 20.06.230 Survey required.  
15 The survey of every proposed subdivision or short subdivision shall be  
16 made by or under the supervision of a registered land surveyor. All  
17 surveys shall conform to standard practices and principles for land  
18 surveying as set forth in the laws of the State of Washington and the  
19 submittal requirements checklist as developed by the Director.  
20 Subdivision control and staking traverses shall close within an error of  
one foot in 5,000 feet for residential and subdivision lots, and one foot  
in 10,000 feet for commercial and industrial development. Primary  
survey control points shall be referenced to section corners and  
monuments.

21 B) NO ADEQUATE STORMWATER DRAINAGE ANALYSIS.

22 Even as late as the March 2007 hearings on this matter, the applicant has not  
23 provided plans for detention facilities for either the Wood Trails or Montevallo plats.  
24 The City has rejected proposals for an open pond for Wood Trails, but the applicant  
25 has not described the size or details of an alternate proposal. At Montevallo, it is not  
26 even clear which way the excess drainage from the stormwater ponds will go. Staff  
27 admitted at the hearing that no downstream analysis of the proposal has been

1 prepared, a required element for applications.

2 The City of Woodinville uses the 1998 King County Stormwater Design  
3 Manual to set drainage and detention standards. See Montevallo Exhibit 1, Staff  
4 Report, page 23, see also WMC 14.09.020. Under chapter two of that document,  
5 the requirements for "drainage plan submittals" are set forth. Section 2.2.1 requires  
6 that for "proposed subdivisions" certain preliminary plans must be submitted  
7 including a conceptual drainage plan, a Level 1 Downstream Analysis ("prepared,  
8 stamped, and signed by a licensed civil engineer registered in the state of  
9 Washington") and topographic information. However, none of this information has  
10 been prepared as the plans remain in flux. Indeed, the FEIS admits at pages 3.2-35  
11 that compliance with the stormwater manual has not yet occurred and apparently will  
12 not until after the proposed subdivision has been approved, a clear violation of  
13 manual requirements. A complete application for a subdivision must contain this  
14 information for the benefit of city reviewers, but also for the public. Such information  
15 is also required as a part of a preliminary plat ("adequate provision for . . . drainage  
16 ways") under RCW 58.17.100.

17 C) NO PLANS FOR ROAD REHABILITATION.

18 There are numerous references to upgrades and rehabilitation to roads in the  
19 vicinity of the project. Indeed, at the hearing the City admitted that there is a need  
20 for a variety of work to be done to the streets to make them "safe" and expressed  
21 concerns over city liability for road defects (a clear admission of the severity of the  
22 problem). However, no plans of any kind have been submitted nor even concepts  
23 for this work because these would be worked out later with the city engineer, after  
24 the approval of the preliminary plat. However, these decisions would not be subject  
25 to public review and scrutiny or analysis and decision as to adequacy by either the  
26 Hearing Examiner or the City Council. Because this work will affect scores of

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1 existing residents, plans for such work should be known and available to the public  
2 for comment.

3 D) NO CRITICAL AREA SPECIAL STUDY HAS BEEN PREPARED NOR  
4 HAS A PLAN FOR BUFFER REDUCTION BEEN SUBMITTED.

5 Under the terms of 21.24.120, the "Critical area special study requirement":

6 (1) An applicant for a development proposal which includes a  
7 critical area or is within an identified critical area buffer shall submit a  
8 critical area special study (report requirements are available at the  
9 Community Development Department) that uses the best available  
10 science to adequately evaluate the proposal and all probable impacts.

11 The subject proposal for a rezone and preliminary plat which meets the code  
12 requirement for a development proposal:

13 21.06.163 Development proposal.  
14 Development proposal: any activities requiring a permit or other  
15 approval from the City of Woodinville relative to the use or  
16 development of land.

17 The staff admits at page 32 of the Montevallo report and page 38 of the Wood  
18 Trails report that no "specific sensitive area study" has been completed for either  
19 proposal, though there is a wetland (sensitive area) on the Montevallo site and  
20 various geologic hazard areas on the Wood Trails site.

21 Further, the Montevallo proposal proposes buffer reduction for the wetlands.  
22 See Appendix N to the FEIS. However, that plan is only conceptual as admitted in  
23 the report.

24 Under the WMC, the sensitive area special study must include analysis of  
25 buffer reduction proposals:

26 21.24.130 Contents of critical area special study.

27 (1) The critical area special study shall be in the form of a written  
28 report and shall contain the following, as applicable:

29 (a) Using the best available science, identification and  
30 characterization of all sensitive areas on or encompassing the  
31 development proposal site;

32 (b) Using the best available science, assessment of the impacts  
33 of any alteration proposed for a critical area or buffer, assessment of  
34 the impacts of any alteration on the development proposal, other

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properties and the environment, and/or assessment of the impacts to the development proposal resulting from development in the critical area or buffer;

- (c) Studies, which propose adequate mitigation, maintenance, monitoring and contingency plans and bonding measures;
- (d) A scale map of the development proposal site; and
- (e) Detailed studies, as required by the Planning Director

(Emphasis supplied).

The applicant argues that these sensitive area special study requirements are met by work done on the EIS. However, the EIS admits that a determination as to whether the sensitive area special study requirement has been met has not yet been made. See FEIS pages 4-69 and 70. Accordingly, the proposal must be denied at the present time until a critical area study is done that analyzes impacts on all critical areas and any proposals for buffer reduction.

E) NO PLANS FOR WATER DIRECTED TO MONTEVALLO WETLANDS ARE DISCLOSED.

The applicant's changes to lots in the Montevallo plat proposal impact and invade the storm drainage facilities. Montevallo site plan, Montevallo Exhibit 62. However, no changes to these detention facilities are disclosed.

F) NO ALTERNATE DRAINAGE TO REPLACE DISPERSAL TRENCHES ARE DISCLOSED.

The original plans for the proposal included dispersal trenches for the Wood Trails plat. However, staff has made clear that such facilities will not be allowed, but the applicant has not disclosed how it will handle stormwater in this location, which is in an erosion hazard and landslide hazard area.

G) NO PLANS FOR WETLAND MITIGATION.

In the Montevallo staff report, potential impacts to wetlands are identified, but no plans for mitigation of these impacts are presented. As the Montevallo staff report states at page 16:

Based on ecological studies conducted by the applicant, a wetland is located on the Montevallo site, but no streams or shorelines. The

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subdivision would involve some permanent and temporary wetland and wetland buffer impacts associated with construction of a non-trenched sewer line. Wetland impacts would be addressed through a mitigation plan consistent with requirements of the WMC 21.24 critical areas development standards. In addition, buffer averaging is being proposed. Consequently, there would be no net loss of wetland functions and values as a result.

(Emphasis supplied). Whether code requirements and other provision are met cannot be determined without the mitigation plan. Such plans must be available for public scrutiny during the preliminary plat process.

H) NO PLANS FOR DEVELOPMENT OF NPGE BUFFERS AND TREE RETENTION ARE DISCLOSED.

The staff reports for both the Montevallo and Wood Trails plat indicate that visual impacts will occur to surrounding properties. E.g. Wood Trails Staff report, page 16:

In addition, the applicant can use landscape buffers around the perimeter of the site to help buffer surrounding land uses, which may address some concerns from adjacent property owners regarding neighborhood visual change. Landscape and Tree Retention Plans shall be submitted with the engineered drawings, reviewed, and approved prior to issuance of a land surface modification permit (Exhibit 12) and subject to City review and approval.

(Emphasis supplied). At page 31, the Montevallo staff report discusses a "native growth protection easement" but only on the final plat. The sufficiency of this proposal cannot be determined at this time.

I) NO SEWER AND WATER AVAILABILITY LETTERS.

Another requirement of the city codes is that sewer and water availability letters be included as a part of the application so that it is known whether sewer and water service is available. Under WMC 20.08.030 concerning preliminary plat review: "the applicant shall file with the Planning Department a preliminary plat application packet in conformance with WMC 17.09.020." WMC 17.09.020 explicitly require sewer and water availability letters: the applicant must provide: "(6) Evidence of adequate water supply as required by RCW 19.27.097; (7) Evidence of sewer

1 availability[.]”

2       However, a November 30, 2006 letter from the Woodinville Water District  
3 states that former “Water and Sewer Availability Certificates” for both Montevallo and  
4 Wood Trails “have expired and are no longer valid.” No new certificates have been  
5 presented and thus the current application is not valid and consistent with application  
6 requirements.” The District’s letter also indicates that “Developer Extension  
7 Agreement applications have not yet been initiated by the developer, . . . .”

8       These issues are critical for two reasons. First, as described at Section 4.2  
9 of this summary below, a plat cannot be approved unless there is a showing that  
10 there are “adequate provisions for . . . potable water supplies, sanitary wastes. . . .”  
11 Without availability certificates, no such determination can be made.       Second,  
12 the developer extension agreements may determine the obligations of other owners  
13 along the line to hook up to the new lines that might be built by Phoenix for the Wood  
14 Trails and Montevallo plats and the costs that such owners would have to pay for  
15 such lines.

16       Again, the issue of landscape and tree retention to buffer the proposals must  
17 be considered and determined during the public review process, not left for later  
18 determination when there is no longer a defined public process. This is required by  
19 city codes:

20       20.06.175 Tree preservation and protection.  
21       All subdivisions and short subdivisions shall provide tree  
22       preservation and protection in accordance with Chapter 21.16  
23       WMC. A tree plan shall be part of the preliminary plat or short  
24       plat submittal requirements and approved prior to preliminary or  
25       short plat approval.

26       Under the code the decision on a tree preservation plan must be a part of a  
27 preliminary plat, not a later decision.

1           **4.2 The Plat Proposal Is Inconsistent with State and City**  
2           **Criteria.**

3           Washington law requires that a subdivision make "adequate provision" for a  
4           number of specific features or it cannot be approved. This is set forth in the state  
5           subdivision statute:

6           58.17.110. Approval or disapproval of subdivision and  
7           dedication--Factors to be considered--Conditions for  
8           approval--Finding--Release from damages

9           (1) The city, town, or county legislative body shall inquire into  
10          the public use and interest proposed to be served by the establishment  
11          of the subdivision and dedication. It shall determine: (a) If appropriate  
12          provisions are made for, but not limited to, the public health, safety,  
13          and general welfare, for open spaces, drainage ways, streets or roads,  
14          alleys, other public ways, transit stops, potable water supplies, sanitary  
15          wastes, parks and recreation, playgrounds, schools and  
16          schoolgrounds, and shall consider all other relevant facts, including  
17          sidewalks and other planning features that assure safe walking  
18          conditions for students who only walk to and from school; and (b)  
19          whether the public interest will be served by the subdivision and  
20          dedication.

21          (2) A proposed subdivision and dedication shall not be  
22          approved unless the city, town, or county legislative body makes  
23          written findings that: (a) Appropriate provisions are made for the public  
24          health, safety, and general welfare and for such open spaces,  
25          drainage ways, streets or roads, alleys, other public ways, transit  
26          stops, potable water supplies, sanitary wastes, parks and recreation,  
27          playgrounds, schools and schoolgrounds and all other relevant facts,  
28          including sidewalks and other planning features that assure safe  
29          walking conditions for students who only walk to and from school; and  
30          (b) the public use and interest will be served by the platting of such  
31          subdivision and dedication. If it finds that the proposed subdivision and  
32          dedication make such appropriate provisions and that the public use  
33          and interest will be served, then the legislative body shall approve the  
34          proposed subdivision and dedication. Dedication of land to any public  
35          body, provision of public improvements to serve the subdivision, and/or  
36          impact fees imposed under RCW 82.02.050 through 82.02.090 may  
37          be required as a condition of subdivision approval. Dedications shall  
38          be clearly shown on the final plat. No dedication, provision of public  
39          improvements, or impact fees imposed under RCW 82.02.050 through  
40          82.02.090 shall be allowed that constitutes an unconstitutional taking  
41          of private property. The legislative body shall not as a condition to the  
42          approval of any subdivision require a release from damages to be  
43          procured from other property owners.

44          This is strong and mandatory language: the plat "shall not be approved" unless these  
45          provisions are made. This language was added in 1995; before the statute read that

1 the legislative body "may disapprove the proposed plat." This change is indicative  
2 of the importance placed on making provision for the statute's features in the  
3 preliminary plat. The proposed Montevallo and Wood Trails plats are inconsistent  
4 with the numerous requirements for subdivision approval, many of which are listed  
5 above in the rezoning section. Some additional requirements that are not met  
6 include the following:

7 A) NO PARKS OR OTHER RECREATIONAL FACILITIES ARE  
8 PROVIDED.

9 One of the criteria for approval of plats is the adequate provision of park and  
10 other recreation facilities. As the staff report for Wood Trails admits: "There are no  
11 existing City of Woodinville parks, recreation facilities or properties (developed or  
12 undeveloped) in the West Wellington neighborhood or within close walking distance."  
13 See Wood Trails Exhibit 1, page 27. In the Montevallo plat, some recreational space  
14 was provided for on the top of the stormwater detention vault, but that space has  
15 been eliminated by the city:

16 Some open space and recreational facilities are planned for  
17 Montevallo, however the design and location of the detention facility  
18 need to change from a vault with active recreational facility to a pond  
19 that would minimize impact to the wetland but eliminate the  
20 recreational facility.

21 Montevallo Staff report, page 13, Montevallo Exhibit 1. Indeed the EIS indicates  
22 that: "the Wellington neighborhoods have poor access to the City Hall Area complex,  
23 which is the only existing City resource that meets the definition of a community  
24 park." FEIS page 3.6-3. There was some discussion during the hearing about city  
25 acquisition of a private park in the area, but the EIS admits that the city considers  
26 "this project to be an unlikely candidate for future acquisition and development."

27 Accordingly, there is a complete lack of recreational facilities in the area, with  
28 no plans of the city to acquire and construct any such facilities. The applicant's  
proposals include no recreational space of an active or passive nature and

1 accordingly the plats (with a possible significant number of young children) must be  
2 rejected because there is no provision for "parks and recreation, or playgrounds..."

3 B) ROAD SYSTEMS ARE INADEQUATE.

4 As described in the section of this brief on the rezones, and in the CNW  
5 Notebook, the road system in the area is inadequate, with multiple design and safety  
6 deficiencies.

7 C) THE PROPOSALS ARE INCONSISTENT WITH THE TERMS OF THE  
8 COMPREHENSIVE PLAN.

9 The state platting statute, RCW 58.17.100 requires that local hearing  
10 examiners (and City Council):

11 shall review all preliminary plats and make recommendations thereon  
12 to the city, town or county legislative body to assure conformance of  
13 the proposed subdivision to the general purposes of the  
14 comprehensive plan and to planning standards and specifications as  
15 adopted by the city, town or county.

16 (Emphasis supplied). In the instant case, we have outlined the conflicts between the  
17 rezones and the comprehensive plan above. These same deficiencies apply equally  
18 to the preliminary plats, demonstrating their inconsistency.

19 As may be seen the proposals are inconsistent with a wide variety of criteria  
20 and must be rejected.

21 **4.3 The Subject Proposal Is Inconsistent with the Provisions of the**  
22 **Dedications in the Summers Addition Plat.**

23 The Montevallo proposal consists of the entirety of the Summers Addition, a  
24 short plat approved by King County in 1976. The recorded documents for the short  
25 plat are attached hereto as Attachment 2.

26 The Summers Addition Short Plat included the dedication of a public street,  
27 N.E. 205<sup>th</sup> Street through the plat to connect with an existing road end. This route,  
28 shown on the approved plat, has a right of way width of 60 feet. As it is dedicated  
to the public, this right-of-way cannot be counted as part of the Montevallo proposal

1 because it is in public ownership. Further, the proposed plan includes lots and  
2 private facilities within the dedicated right-of-way area, again inconsistent with public  
3 ownership. We incorporate by reference the comments of Michael Daudt in a letter  
4 dated April 16, 2007 with a copy of the Summers plat attached.

5 The applicant seems to argue that the dedication is either ineffective or can  
6 be modified. First the applicant says that the centerline of the road can be moved  
7 or "subject to revision." However, that does not indicate that the public's right in the  
8 road can be eliminated entirely. Second, the applicant seeks refuge in the language  
9 of the dedication and plat that the owner of Lot 1 may be required to construct a  
10 public street. However, that does not change the fact of the dedication, only that the  
11 owner may be responsible for actual physical construction of a road.

12 The Montevallo proposal should be modified to eliminate any uses with the  
13 public ownership of the dedicated street right-of-way, unless the road right-of-way  
14 is vacated.

15 **4.4 The Wood Trails Site Does Not Qualify as a Sending Site for**  
16 **Purposes of Transfer of Development Credits.**

17 The applicant proposes that it transfer development credits from the Wood  
18 Trails site to the Montevallo site. However, under WMC 21.36.030 the transfer of  
19 such credits is only allowed for areas of natural or community significance as found  
20 in the City of Woodinville Comprehensive Plan or a "function plan" identified by the  
21 City. The text of the ordinance reads as follows:

22 (2) Sending sites must contain one or more of the following features, as  
23 defined in the Comprehensive Plan or other functional plan adopted by the  
24 City or County:

- 25 (a) Open spaces;
- 26 (b) Wildlife habitat;
- 27 (c) Woodlands;
- 28 (d) Shoreline access;
- (e) Community separator;
- (f) Regional trail/natural linkage;
- (g) Historic landmark designation;
- (h) Agricultural land not encumbered through the County's farmlands

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- preservation development rights purchase program;
- (i) Park site that meets adopted size, distance and other standards for serving the receiving sites to which the density credits are being transferred; or
- (j) Freestanding multistory parking garage located on a site zoned CBD.

(Emphasis Supplied). However, an examination of the comprehensive plan, the future land use map and other functional plans show that the site does not contain designations for parks, open spaces or other features that qualify the Wood Trails property as a sending site. The plain language of the ordinance requires that for a site to qualify as a sending site it must contain something more than generic open space or woodlands. In short, there must be something special about the property that justifies its preservation through transfer of development credits. Thus, the site must be recognized as a site with significant public benefits through designation in the comprehensive plan or a function plan. The areas on the Wood Trail property do not contain the attributes to be recognized by city plans and thus does not qualify for a "sending site." Accordingly, the site does not qualify as a sending site and the Montevallo site cannot receive density credits.

**4.5 Conclusion re Preliminary Plats.**

In this section CNW has shown that the preliminary plats must be rejected, even if the rezoning is approved. This is so for two reasons.

First, the current proposal does not contain the minimum necessary information for a preliminary plat, including no accurate plat drawings, no stormwater plans or analysis, no plans for road rehabilitation, no critical area special study, no plans for water controls at the Montevallo plat, no plans to replace Wood Trails dispersal trenches, no plans for wetland mitigation and no plans for NGPE or tree retention plans. The proposal that many of these issues await the final plat is inconsistent with the law. Further, such a procedures deprives the local community from input on these issues during plat proceedings and grant decision making on

1 these matters solely to staff. The plat should be rejected and remanded for  
2 preparation of these important materials.

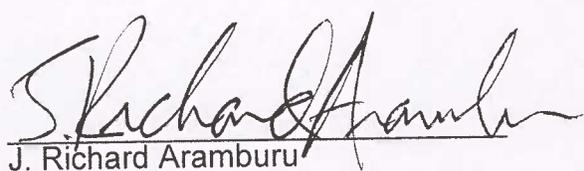
3 Second, the plat does not meet minimum criteria for approval of plats that  
4 includes recreational facilities, road systems, drainage and the comprehensive plan

5 Based on the foregoing the plats for Wood Trails and Montevallo must be  
6 rejected.

7 **V. CONCLUSION**

8 In conclusion, the applicant has not met state and local standards for a rezone  
9 of the Wood Trails and Montevallo properties from R-1 to R-4 and such requests  
10 should be denied. Such denial, the plat cannot be reviewed because their densities  
11 are dependent on R-4 zoning. Even if the Hearing Examiner decides to review the  
12 plat, it is first apparent that the proposals do not meet minimal requirements for  
13 preliminary plat under state and local law and must at least be remanded so that the  
14 required information can be provided. In any event, as currently configured the plat  
15 proposal are inconsistent with a number of state and local requirements and must  
16 accordingly be denied.

17 DATED: April 19, 2007

  
J. Richard Aramburu  
WSBA 466  
Attorney for Concerned Neighbors  
of Wellington

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

EXHIBIT 159  
PAGE 42 OF 50

CORRINE R. HENSLEY, )

Petitioner, )

v. )

CITY OF WOODINVILLE, )

Respondent. )

Case No. 96-3-0031

**FINDING OF COMPLIANCE**

**I. PROCEDURAL BACKGROUND**

On June 24, 1996, the City of Woodinville adopted a comprehensive plan (the **Plan**), through Ordinance No. 157. On August 29, 1996, Corrine R. Hensley (**Hensley**) filed a petition for review with the Central Puget Sound Growth Management Hearings Board (the **Board**), alleging that portions of the Plan violated provisions of the Growth Management Act (the **Act**.) The matter was assigned Case No. 96-3-0031, and captioned *Hensley v. Woodinville*.

On February 25, 1997, following briefing and a hearing on the merits, the Board issued a Final Decision and Order (the **FDO**), which provided that:

The City of Woodinville is **in compliance** with the requirements of the Growth Management Act, **except:**

1. The Land Use Element does not provide a review of drainage, flooding, and storm water run-off in the area and nearby jurisdictions. The Land Use element is remanded to the City with direction to provide the required review by reference or other means consistent with the Act as interpreted by the Board's holdings and conclusions above.
2. Land Use Policy LU-3.6 is **remanded** to the City with instructions to delete or amend it consistent with the Act as interpreted by the Board's holdings and conclusions above.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than 5:00 p.m. on Friday, August 22, 1997. The City shall provide the board with an original and three copies of a Statement of compliance indicating what steps it took to comply with this Order, and serve a copy on Petitioner, by 5:00 p.m. on Friday, August 29, 1997. FDO, at 14-15 (emphasis in original).

On August 19, 1997, the Board received from the City a Statement of Compliance setting forth the actions taken to comply with the Board's Order, and providing two attachments showing the modifications made to the Plan.

On August 26, 1997, the Board issued a Notice of Compliance Hearing, establishing an optional briefing schedule and setting a Compliance Hearing for October 9, 1997.

Petitioner Hensley did not submit a brief.

On October 7, 1997, the presiding officer contacted Hensley by phone to determine whether she intended to participate in the Compliance Hearing, and was informed that she did not intend to participate.

Attachment 1

Also on October 7, 1997, the presiding officer spoke with the City's attorney by phone, informing her of Hensley's decision, and discussing two portions of the City's Statement of Compliance which were at variance with the Board's Order. The City's representative agreed to the Board's conducting the compliance hearing telephonically.

On October 7, 1997, the Board received by facsimile transmission a revised Statement of Compliance.

On October 9, 1997, the Board held a telephonic Compliance Hearing. Present for the Board were Board members Edward G. McGuire, and Chris Smith Towne, presiding officer. Dawn Findlay represented the City of Woodinville. Hensley did not participate in this telephonic hearing.

## II. FINDINGS OF FACT

1. On August 11, 1997, the Woodinville City Council adopted Ordinance No. 185. This ordinance amended the Land Use Appendix to the Plan, section A-3.3.2, by expanding the discussion of Watershed Basins to include the Little Bear Creek basin. Attachment A to Statement of Compliance, at 43-45.
2. Ordinance No. 185 also amended the Appendix to the Plan to add a Summary of Surrounding Drainage, Flooding, and Stormwater Runoff for the cities of Woodinville, Redmond and Bothell and portions of King and Snohomish Counties, and also summarized planning activities for the Bear Creek, Sammamish River, and Little Bear Creek Basins specifically, and the Puget Sound Region generally. References to relevant plans contained in other documents and reports were provided. Attachment A to Statement of Compliance, at 45-51.
3. Ordinance No. 185 also amended the Land Use section of the Plan, Goal LU-3, by deleting LU 3.6. Attachment B to Statement of Compliance, at 3.

## III. CONCLUSIONS OF LAW

1. By amending the Land Use Appendix to the Plan, expanding the discussion of Watershed Basins to include the Little Bear Creek basin, Woodinville has complied with the Act as set forth in the Board's Final Decision and Order.
2. By amending the Appendix to the Plan, adding a Summary of Surrounding Drainage, Flooding, and Stormwater Runoff for the cities of Woodinville, Redmond and Bothell, and portions of King and Snohomish Counties, summarizing planning activities for the Bear Creek, Sammamish River, and Little Bear Creek Basins specifically, and the Puget Sound generally, Woodinville has complied with the Act as set forth in the Board's Final Decision and Order.
3. By deleting Land Use Policy LU 3.6, Woodinville has complied with the Act as set forth in the Board's Final Decision and Order.

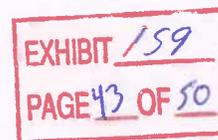
## IV. FINDING OF COMPLIANCE

The Board, having reviewed its Final Decision and Order and the file in this case, and having reviewed the above referenced documents, concludes that the City of Woodinville **has complied** with the Board's Final Decision and Order.

Therefore, the Board issues a Finding of Compliance to the City in this case.

So ORDERED this 10th day of October, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD



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Edward G. McGuire, AICP  
Board Member

---

Chris Smith Towne  
Board Member

EXHIBIT 159  
PAGE 44 OF 50

# SUMMERS ADDITION

## SECTION 2, TWP. 26 N., R. 5 E., W.M.

### KING COUNTY, WASHINGTON

EXHIBIT 159  
PAGE 45 OF 50

#### DESCRIPTION

This plat of SUMMERS ADDITION embraces that portion of the North 1/2 of Government Lot 3 in Section 2, Township 26 North, Range 5 East, W.M., King County, Washington. Except Tracts B, C, and D in the short plat filed under Auditor's File Number 752402045, records of said county; except the East 30.00 Feet for road purposes, more particularly described as follows:

Commencing at the Northeast corner of said subdivision; thence N 88°24'48" W along the North line of said subdivision 30.01 feet to the Point of Beginning; thence S 0°20'16" W along the westerly margin of 156th Avenue N E 653.54 feet to the South line of said subdivision; thence S 82°38'02" W along said South line 992.56 feet to the East line of said tract C; thence N 0°02'03" W along said East line 233.33 feet to the North line of said tract C; thence N 88°38'02" W along said North line of Tract C and the North line of Tract D 755.37 feet to the West line of said subdivision; thence N 0°02'03" W along said West line 251.28 feet to a point on the South line of said Tract B; said point being on the arc of a curve to the right from which the center bears S 0°02'03" E 421.74 feet distant; thence easterly along said curve and South line through a central angle of 1°32'15" an arc distance 13.37 feet to a point of tangency; thence S 88°24'48" E along said South line 256.62 feet to the East line of said Tract B; thence N 0°02'03" W along said East line 225.61 feet to the North line of said subdivision; thence S 98°24'48" E along said North line 596.54 feet to the Point of Beginning.

#### RESTRICTIONS

No lot or portion of a lot in this plat shall be divided or sold or resold or ownership transferred whereby the ownership of any portion of this plat shall be less than the area required for the use district in which located. All lots shown on this plat shall be divided without prior approval from King County and Seattle King County Department of Public Health. Further the lots created by such future subdivision must be served by public sewers.

#### LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat of SUMMERS ADDITION is based upon an actual survey and subdivision of Section 2, Twp. 26 N., Range 5 E., W.M.; that the courses and distances are shown correctly thereon; that the corners will be set on the lot and block corners staked correctly on the ground and that I have fully complied with the provisions of the platting regulations.



D.K. Robbins, Prof. Land Surveyor  
Certificate No. 9435

#### APPROVALS

Examined and approved this 21st day of June, 1976.  
DEPARTMENT OF PUBLIC WORKS

Director  
Examined and approved this 24th day of June, 1976.  
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Manager, Division of Building and Land Development  
Examined and approved this 25th day of June, 1976.  
DEPARTMENT OF ASSESSMENTS

King County Assessor  
Examined and approved this 27th day of June, 1976.  
KING COUNTY COUNCIL

Chairman, King County Board  
Clerk of Council

#### COMPTROLLERS CERTIFICATE

I hereby certify that all property taxes are paid, that there are no delinquent special assessments certified to this office for collection and that all special assessments certified to this office for collection on any of the property herein contained, dedicated as streets, alleys or for other public use, are paid in full this 7th day of July, 1976.

OFFICE OF COMPTROLLER  
King County Comptroller  
Deputy King County Comptroller

#### RECORDING CERTIFICATE 7607070463

Filed for Record at the request of the King County Council this 7th day of July, 1976, at 12 minutes past 0000 and recorded in Volume 100 of Plats, page 333, Records of King County, Washington.

DIVISION OF RECORDS AND ELECTIONS  
Manager  
Superintendent of Records

#### EASEMENT PROVISIONS

An easement is hereby reserved for and granted to PUGET SOUND POWER & LIGHT COMPANY, GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., and KING COUNTY WATER DISTRICT, NO. 104 and their respective successors and assigns, under and upon the exterior 7.5 feet, abutting with and adjoining the street frontage of all lots in which it is installed, to construct, erect, operate and maintain underground conduits, cables, pipe and wires with necessary appurtenances and other equipment for the purpose of serving this subdivision and other properties with electric, telephone, and utility service together with the right to enter upon the lots at all times for the purposes herein stated. Also, each lot shall be subject to all existing utilities and drainage.

No lines or wires for the transmission of electric current, for telephone, utility, cable, or police signals, or for other purposes, shall be placed, constructed, or maintained upon any lot outside the buildings thereon unless the same shall be underground or be conduct attached to the building.

#### DEDICATION

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned owners, in the name of the Land hereby platted, hereby declare this plat and dedicate to the use of the public forever all streets & avenues shown thereon and the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes; also the right to make all necessary slopes for cuts and fills upon the lots and blocks shown on this plat in the original reasonable grading of the streets and avenues shown hereon.

HELEN WOODRUFF  
Wet Withers  
James S. Juszel  
TERRY L. SUMMERS  
Suzanne B. Withers  
PATRICIA E. JUZZEL, his wife  
Pamela A. Summers  
PAMELA A. SUMMERS, his wife

#### ACKNOWLEDGMENT

STATE OF WASHINGTON  
COUNTY OF KING

This is to certify that on this 1st day of FEBRUARY, 1976, before me, the undersigned, a Notary Public personally appeared HELEN WOODRUFF and PATRICIA E. JUZZEL, his wife, to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
Merton J. Jarvel  
Notary Public in and for the State of Washington  
Residing at WOODINVILLE

STATE OF WASHINGTON  
COUNTY OF KING

This is to certify that on this 1st day of March, 1976, before me, the undersigned, a Notary Public personally appeared WET WITHERS and PATRICIA E. JUZZEL, his wife, to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
Merton J. Jarvel  
Notary Public in and for the State of Washington  
Residing at WOODINVILLE

STATE OF WASHINGTON  
COUNTY OF KING

This is to certify that on this 12th day of JUNE, 1976, before me, the undersigned, a Notary Public personally appeared JAMES L. JUZZEL and PATRICIA E. JUZZEL, his wife, to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
Merton J. Jarvel  
Notary Public in and for the State of Washington  
Residing at WOODINVILLE

STATE OF WASHINGTON  
COUNTY OF KING

This is to certify that on this 12th day of JUNE, 1976, before me, the undersigned, a Notary Public personally appeared TERRY L. SUMMERS and PAMELA A. SUMMERS, his wife, to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
Merton J. Jarvel  
Notary Public in and for the State of Washington  
Residing at WOODINVILLE

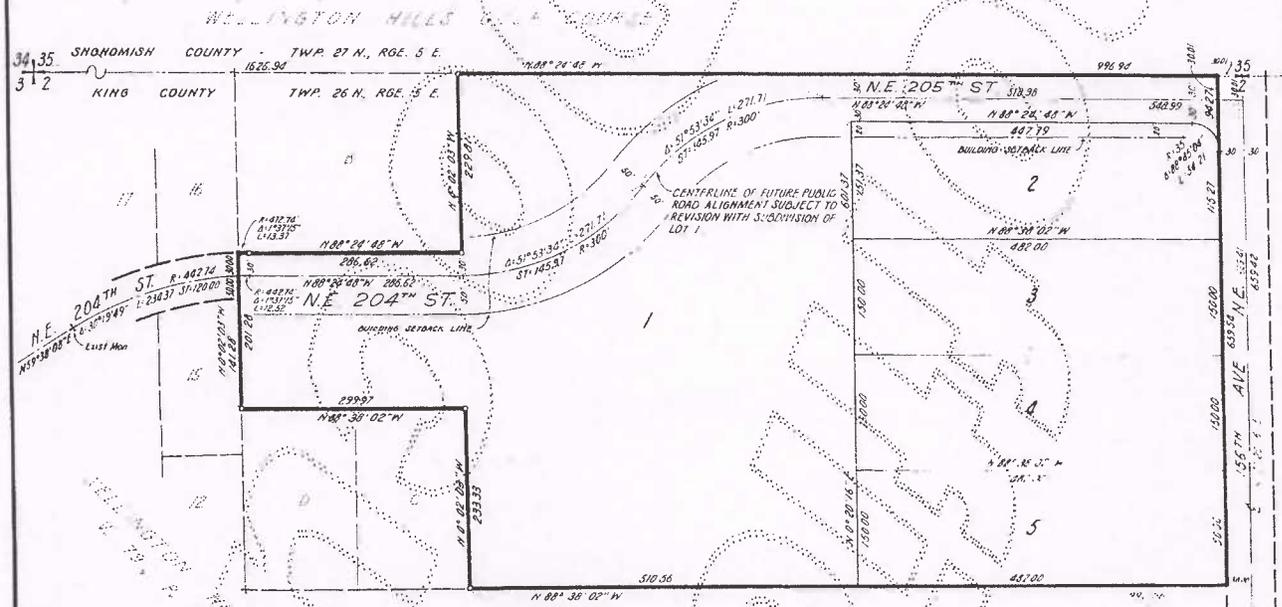
GROUP FOUR, INC.

EXHIBIT 159  
PAGE 46 OF 50

# SUMMERS ADDITION

## SECTION 2, TWP. 26 N., R. 5 E., W.M.

KING COUNTY, WASHINGTON



**NOTE**

SUBDIVIDING OF LOTS 2, 3, 4, & 5 SHALL REQUIRE ACCESS FROM A PUBLIC STREET OTHER THAN 156<sup>TH</sup> AVE. N.E. FUTURE STRUCTURES PROHIBITED WITHIN 50 FEET OF FUTURE ROAD CENTERLINE.

SUBDIVISION OF LOT 1 MAY REQUIRE THE CONSTRUCTION OF A PUBLIC STREET BETWEEN N.E. 204<sup>TH</sup> STREET AND 156<sup>TH</sup> AVENUE, N.E.



SCALE 1" = 100'

• iron monument  
o capped iron pipe



*D. K. Roue*  
D. K. Roue, Prof. Land Surveyor  
Certificate No. 9435

MICHAEL DAUDT  
mdaudt@tousley.com

OUR FILE NO:  
H-4585-001.B1

April 16, 2007

VIA EMAIL AND U.S. MAIL

Greg Smith  
Hearing Examiner  
c/o Development Services Department  
17301 NE 133<sup>rd</sup> Avenue NE  
Woodinville, WA 98072

Re: Wood Trails Rezone and Preliminary Plat, File Nos. ZMA2004-053 and PPA2004-054  
Montevallo Rezone and Preliminary Plat, File Nos. ZMA2004-94 and PPA2004-093  
Written Comments

Dear Mr. Smith:

Please accept this letter and enclosure as part of the written record for the hearings on the above-referenced applications.

Enclosed is a copy of the original plat for the property which is the subject of the Montevallo applications. There are two items of significance in the plat. First, the plat depicts a road, labeled N.E. 205<sup>th</sup> Street and N.E. 204<sup>th</sup> Street, over the northern portion of the property and "dedicate[s] to the use of the public forever all streets and avenues shown and the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes." Nothing in the record indicates that this public road dedication was ever vacated. Furthermore, a significant portion of the area depicted as N.E. 205<sup>th</sup> Street has actually been used for many years as a public road to access adjacent properties, including properties to the north that are currently owned by the Husos and the Hanikas. Because the application calls for this public road to be removed and houses built in the public road, and the applicant has not followed the required procedures to vacate the public road, the application should be denied.

The second significant item in the original plat is found under the heading "Restrictions," where the plat states that "no lots shown on this plat shall be divided without prior

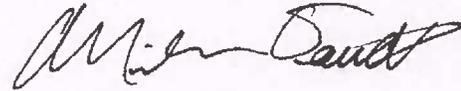
Greg Smith  
April 16, 2007  
Page 2

EXHIBIT 159  
PAGE 48 OF 50

approval from King County and Seattle-King County Department of Public Health.” No such approvals have been obtained by the applicant.

Sincerely,

TOUSLEY BRAIN STEPHENS PLLC



Michael Daudt

MDD/mdd  
Enclosure

cc: G. Richard Hill (email)  
J. Richard Aramburu (email)  
J. Zachary Lell (email)  
Cindy Baker (email)  
Clients

4585/001/204245.1

# SUMMERS ADDITION

## SECTION 2, TWP. 26 N., R. 5 E., W.M.

KING COUNTY, WASHINGTON

100-33

### DESCRIPTION

This plat of SUMMERS ADDITION embraces that portion of the North 1/2 of Government Lot 3 in Section 2, Township 26 North, Range 5 East, W.M., King County, Washington; Except Tracts B, C, and D in the short plat filed under Auditor's File Number 750402045, records of said county; Except the East 30.00 feet for road purposes, more particularly described as follows:

Commencing at the Northeast corner of said subdivision; thence N 88°21'48" W along the North line of said subdivision 30.01 feet to the Point of Beginning; thence S 0°20'16" W along the Westerly margin of 156th Avenue N.E. 659.54 feet to the South line of said subdivision; thence N 88°38'02" W along said South line 992.56 feet to the East line of said Tract C; thence N 0°02'03" W along said North line of Tract C and the North line of Tract D 299.9 feet to the West line of said subdivision; thence N 0°02'03" W along said West line 201.28 feet to a point on the South line of said Tract B, said point being on the arc of a curve to the right from which the center bears S 0°02'03" E 472.74 feet distant; thence Easterly along said curve and South line through a central angle of 1°37'15" an arc distance 13.37 feet to a point of tangency; thence S 88°24'48" E along said South line 286.62 feet to the East line of said Tract B; thence N 0°02'03" W along said East line 229.81 feet to the North line of said subdivision; thence S 88°24'48" E along said North line 996.94 feet to the Point of Beginning.

### RESTRICTIONS

No lot or portion of a lot in this plat shall be divided and sold or resold or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area required for the use district in which located. Also no lots shown on this plat shall be divided without prior approval from King County and Seattle-King County Department of Public Health. Further, the lots created by each future subdivision must be served by public sewers.

### LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat of SUMMERS ADDITION is based upon an actual survey and subdivision of Section 2, Twp. 26 N., Range 5 E., W.M.; that the courses and distances are shown correctly thereon; that the monuments will be set and the lot and block corners staked correctly on the ground and that I have fully complied with the provisions of the platting regulations.



*D. K. Roupe*  
D.K. Roupe, Pro. Land Surveyor  
Certificate No. 9435

### EASEMENT PROVISIONS

An easement is hereby reserved for and granted to PUGET SOUND POWER & LIGHT COMPANY, GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., and KING COUNTY WATER DISTRICT NO. 104 and their respective successors and assigns, under and upon the exterior 7 feet, parallel with and adjoining the street frontage of all lots in which to install, lay, construct, renew, operate and maintain underground conduits, cables, pipe and wires with necessary facilities and other equipment for the purpose of serving this subdivision and other property with electric, telephone, and utility service together with the right to enter upon the lots at all times for the purposes herein stated. Also, each lot shall be subject to an easement 2.5 feet in width, parallel with and adjacent to all interior lot lines for purposes of utilities and drainage.

No lines or wires for the transmission of electric current or for telephone use, CATV, fire or police signals, or for other purposes, shall be placed or permitted to be placed upon any lot outside the buildings thereon unless the same shall be underground or in conduit attached to the building.

### DEDICATION

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned owners in fee simple of the land hereby platted, hereby declare this plat and dedicate to the use of the public forever all streets, avenues shown thereon and the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes; also the right to make all necessary slopes for cuts and fills upon the lots and blocks shown on this plat in the original reasonable grading of the streets and avenues shown hereon. IN WITNESS WHEREOF we have set our hands and seals.

*Walter R. Widhopf*  
HELEN WIDHOPF

*W.T. Withers*  
W.T. WITHERS

*James L. Juscel*  
JAMES L. JUJSEL

*Terry E. Summers*  
TERRY E. SUMMERS

*Deborah A. Withers*  
DEBORAH A. WITHERS, his wife

*Patricia E. Juscel*  
PATRICIA E. JUJSEL, his wife

*Pamela J. Summers*  
PAMELA J. SUMMERS, his wife

### ACKNOWLEDGMENT

STATE OF WASHINGTON) ss.  
COUNTY OF KING)

This is to certify that on this 1 day of FEBRUARY, 1976, before me, the undersigned, a Notary Public personally appeared HELEN WIDHOPF to me known to be the individual who executed the within dedication, and acknowledged to me that he signed and sealed the same as his voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
*Marlon J. Jorale*  
Notary Public in and for the State of Washington  
Residing at WOOD INVILLE

STATE OF WASHINGTON) ss.  
COUNTY OF KING)

This is to certify that on this 1 day of March, 1976 before me, the undersigned, a Notary Public personally appeared W.T. WITHERS to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
*Marlon J. Jorale*  
Notary Public in and for the State of Washington  
Residing at WOOD INVILLE

STATE OF WASHINGTON) ss.  
COUNTY OF KING)

This is to certify that on this 12 day of JUNE, 1976 before me, the undersigned, a Notary Public personally appeared JAMES L. JUJSEL to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
*Marlon J. Jorale*  
Notary Public in and for the State of Washington  
Residing at WOOD INVILLE

STATE OF WASHINGTON) ss.  
COUNTY OF KING)

This is to certify that on this 12 day of JUNE, 1976 before me, the undersigned, a Notary Public personally appeared TERRY E. SUMMERS to me known to be the individuals who executed the within dedication, and acknowledged to me that they signed and sealed the same as their voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year first above written.  
*Marlon J. Jorale*  
Notary Public in and for the State of Washington  
Residing at WOOD INVILLE

### APPROVALS

Examined and approved this 21st day of June, 1976.

#### DEPARTMENT OF PUBLIC WORKS

*W. Helt*  
Director

Examined and approved this 24th day of June, 1976.

#### DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

*Edward B. Lane*  
Manager, Division of Building and Land Development

Examined and approved this 25 day of June, 1976.

#### DEPARTMENT OF ASSESSMENTS

*R. Mailer*  
King County Assessor

Examined and approved this 27th day of July, 1976.

#### KING COUNTY COUNCIL

*John M. ...*  
Chairman, King County Council

*...*  
Deputy, King County Assessor

*...*  
Clerk of Council

### COMPTROLLERS CERTIFICATE

I hereby certify that all property taxes are paid, that there are no delinquent special assessments certified to this office for collection and that all special assessments certified to this office for collection on any of the property herein contained, dedicated as streets, alleys or for other public use, are paid in full. This 27 day of July, 1976.

#### OFFICE OF COMPTROLLER

*...*  
King County Comptroller

*...*  
Deputy King County Comptroller

### RECORDING CERTIFICATE 7607070463

Filed for Record at the request of the King County Council this 7 day of JULY, 1976, at 12 minutes past noon, and recorded in Volume 100 of Plats, pages 33-34, records of King County, Washington.

#### DIVISION OF RECORDS AND ELECTIONS

*...*  
Manager

*...*  
Superintendent of Records

GROUP FOUR, INC.

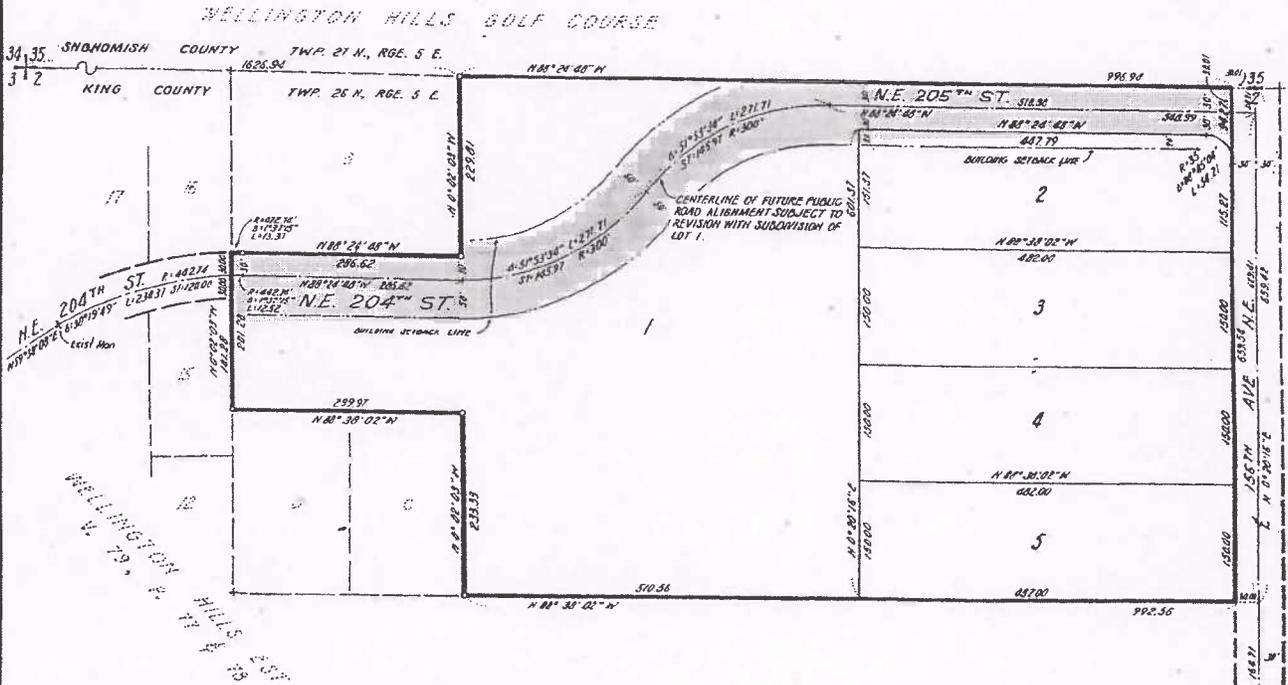
SHEET 1 OF 2 SHEETS

752M

1625 JG.

100-34

**SUMMERS ADDITION**  
**SECTION 2, TWP. 26 N., R. 5 E., W.M.**  
**KING COUNTY, WASHINGTON**



WELLINGTON HILLS ESTATES

**NOTE**  
SUBDIVIDING OF LOTS 2, 3, 4 & 5 SHALL REQUIRE ACCESS FROM A PUBLIC STREET OTHER THAN 156<sup>TH</sup> AVE N.E.  
FUTURE STRUCTURES PROHIBITED WITHIN 50 FEET OF FUTURE ROAD CENTERLINE.  
SUBDIVISION OF LOT NO. 1 MAY REQUIRE THE CONSTRUCTION OF A PUBLIC STREET BETWEEN N.E. 204<sup>TH</sup> STREET AND 156<sup>TH</sup> AVENUE N.E.



*D. K. Rouse*  
D. K. Rouse, Prof. Land Surveyor  
Certificate No. 9115



SCALE 1" = 100'

+ conc. monument  
\* plugged iron pipe