

HEARINGS EXAMINERS REPORT & RECOMMENDATION TO CITY COUNCIL

SCHNEIDER HICKS LAKE MULTI-FAMILY 21-81

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT, SHORELINE CONDITIONAL USE PERMIT, SHORELINE VARIANCE, WETLAND DEVELOPMENT PERMIT, SITE PLAN REVIEW, LAND CLEARING/CLASS IV FOREST PRACTICES PERMIT

Background

The Lacey Community & Economic Development Department received an application for a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Shoreline Variance, Site Plan Review, Wetland Development Permit, and Class IV Forest Practices Application to develop 178-unit apartment complex that would include three residential buildings with associated surface and underground parking; recreational facilities including two recreational facility structures, a play area structure, a sports court, and an in-ground pool and spa; a pier and floating dock, with associated pathway from the apartment complex, providing access to Hicks Lake; and other associated appurtenances and improvements.

Mr. Andrew Reeves from Sound Law Center, acting in his capacity as a Hearings Examiner for the City of Lacey, conducted an open-record public hearing on May 26, 2022. The hearing was held as a Zoom webinar that allowed for public testimony. The record was left open until June 6, 2022 to allow the submission of supplemental comments/arguments by the Deschutes Law Group and to allow the Applicant to respond to public testimony and written comments.

All hearing notices provided information necessary for the public and interested parties to attend the virtual hearing. City staff, the applicant, and members of the public provided testimony and exhibits relating to the project for the Examiner's consideration.

The record before the Hearings Examiner includes:

- Community & Economic Development staff analysis.
- Application materials, technical reports, and studies.
- Comments from City staff and other Public Agencies.
- 67 emails and letters from the public.
- Testimony from the open-record public hearing, including reports from City staff, the applicant and their representatives, and 21 members of the public.

The full record is documented in Attachment A to the Examiners recommendation and is posted on the City Website in full, including a recording of all testimony from the public hearing.

Council Role

In the matter of Conditional Use Permits, the Examiner creates the record and makes a recommendation to the City Council based on that record. The Council, acting in its quasi-judicial role, reviews the record and the Examiner's recommendation and may approve, modify, or reverse the recommendation of the Examiner.

If the Council approves the recommendation the Council, by default, adopts the Examiners findings of fact and conclusions of law in support of the decision and no further action is required.

If the Council modifies or reverses the recommendation, the Council must adopt findings of fact and conclusions of law which support the decision. Adopted findings of fact and conclusions of law must be based on the record created by the Examiner and must be articulated by the Council. The adopted findings and conclusions would be subsequently transcribed by the City Attorney's office for consideration at a future Council meeting.

Staff Role – In the matter of a Hearing Examiner recommendation to the City Council regarding a quasi-judicial land use application, the record is closed at the conclusion of the public hearing held by the Hearing Examiner. As such, staff is limited to transferring the hearing examiner recommendation and complete record to the City Council and respond only to procedural questions or clarifications of the record. Staff cannot introduce new information, testimony or offer advice to council on a decision or supportive findings.

Appearance of Fairness

The Washington State Appearance of Fairness Doctrine is a rule of law which requires government decision-makers to conduct non-court hearings and proceedings in a manner that is fair and unbiased in both appearance and fact.

The doctrine prohibits any decision-making body acting in a quasi-judicial role from ex-parte (off the record) contact. Councilmembers that have engaged in ex-parte communication are required to: 1) place the substance of any oral or written communication concerning the decision on the record; and 2) allow involved parties to rebut the substance of the communication.

Councilmembers should consider:

1. Whether they have any personal interests (financial, property, employment, membership, family/social) that would be affected by denying or approving the requested conditional use;
2. Whether they have had any "ex-parte" communications (off-the-record), either written or oral, concerning the requested conditional use with any proponents or opponents while this matter was before the Council; and
3. Whether there is any reason they cannot consider the requested conditional use application in a fair and impartial manner.