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District One
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District Two
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District Three




RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Cliff Moore
Director

MEMORANDUM

TO: Parties of Record

FROM: Cami Petersen 
Land Use Clerk

DATE: March 17, 2011

SUBJECT: **Project No. 2004106036, Sequence No. 10-127207 & 10-127208 VE,
McAllister Meadows, LLC and North Thurston School District No. 3**

Attached is a copy of the Decision of the Board of Thurston County Commissioners relating to the above-mentioned case.

Any appeal of this land use decision must be filed in Superior Court pursuant the Land Use Petition Act, RCW Chapter 36.70C, within 24 days of the mailing of this decision.

Please contact me at (360) 754-3355 extension 6348 if you have questions regarding this Decision.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

McAllister Meadows, LLC and North
Thurston School District No. 3

Project No. 2004106036
Appeal Nos. 10-127207VE & 10-127208VE

DECISION

THIS MATTER came before the Board of County Commissioners (Board) on February 8, 2011 and March 7, 2011 as a result of appeals filed by McAllister Meadows, LLC and North Thurston Public Schools No. 3 (District) of the hearing examiner's decision on reconsideration dated November 23, 2010 which approved a request for a preliminary plat, with conditions, to divide 17.57 acres into 93 detached single-family residential lots. The issues on appeal concern the hearing examiner's conclusions and conditions of preliminary plat approval related to provisions of adequate school facilities to serve the proposed subdivision. McAllister Meadows also cited other issues, but failed to brief these issues in its appeal memo and therefore they have not been considered by the Board. See TCC 2.06.070(B).

The Board reviewed the hearing examiner's decision, the record of evidence presented to the hearing examiner, legal memoranda submitted by the parties, and heard oral argument from the parties. In addition, the Board heard an oral presentation from the hearing examiner on the grounds for his decision.

Upon review of the evidence and the written and oral arguments, the Board denies the appeals and affirms the hearing examiner for the following reasons:

- No party has challenged any of the findings of fact – therefore they are verities on appeal. Furthermore, each of these findings is supported by substantial evidence in the record.
- The hearing examiner's conclusions of law addressing whether or not the proposed subdivision fails to make appropriate provisions for schools under RCW 58.17.110, absent conditions, are supported by the undisputed findings of fact. These facts and evidence in the record show that: (1) the District presently has deficient facilities which will worsen over the next six years absent additional funding; (2) for this reason the District itself concedes that it anticipates it will not have facilities available to accommodate the additional students generated as a direct result of the proposed McAllister Meadows development; (3) the mitigation provided by the Applicant does not constitute full funding of the capital facilities necessary to house the students which will be generated as a direct result of the development; and (4) the evidence submitted by the District shows that it plans and anticipates that the combination of mitigation payments with other revenues, including the proposed 2012 general obligation bond if it passes, will supply adequate financing so that adequate school

facilities will be in place for the students from the proposed development.

- The hearing examiner appropriately conditioned approval of this plat on passage of the 2012 bond, or alternatively on another plan submitted by the District which demonstrates financing is in place to construct adequate facilities needed to remedy capacity deficits for this subdivision. These conditions are appropriate under RCW 58.17.110 because if the District's plans fall short of reality and adequate facilities turn out not to be available as planned then these conditions are in place to assure that adequate provisions are in place before the subdivision receives final approval.
- The examiner did not exceed his authority when he differed from the District's legal assertions about whether or not this proposal makes adequate provision for schools. The hearing examiner accepted and in fact relied on the District's facts on available school facilities, projected enrollment, deficiencies and financing options to remedy the deficiencies. The hearing examiner also accepted the District's position that portables and busing are legal and legitimate interim measures to provide capacity pending permanent facilities.
- Where the hearing examiner differed from the District is in the legal effect of the proposal and whether reliance on a future bond issue makes appropriate provisions for schools, given all the facts of the case. As the hearing examiner observed, if he "were to make a different decision simply because it was that of the District, he would effectively be ceding the authority of Hearing Examiner to the District."
- Pursuant to RCW 58.17.110, it is the County, through the hearing examiner, and not the School District, that is vested with authority to determine, at the permitting level, whether or not "adequate provisions" for schools have been made for the proposed subdivision.


IT IS HEREBY ORDERED AS FOLLOWS:

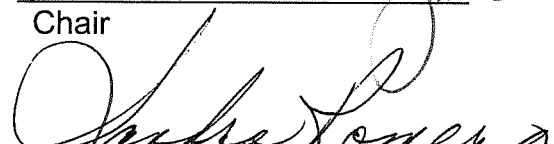
The hearing examiner's decision on reconsideration is affirmed.

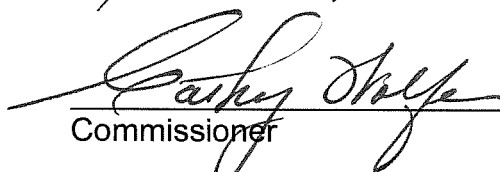
ATTEST:

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington


Clerk of the Board


Chair


Vice-Chair


Commissioner