

Neighbors of Seahurst Park Hearing RE: Appeal of Clearing Permit for Emerald Pointe/Westmark Property on Temporary Hiatus

Press Release: July 12, 2013

The appeal of the clearing permit for the EMERALD POINTE project was brought to a sudden halt at the end of the second day of testimony (July 9, 2013) by the Hearing Examiner Mr. Ted Hunter when the developer unexpectedly announced a major revision of the project. The revision would eliminate the two large apartment buildings and a swimming pool that were slated to hover over the edge of Seahurst Park. Parking and roadways associated with those buildings would also be eliminated. A clubhouse slated for that area will be moved elsewhere on the site. The change should allow for retention of existing trees and groundcover in a large area directly adjacent to the park. This should reduce the risk of landslides, erosion and other degradation of fish-bearing streams in the park, impacts to public trails, and aesthetic impacts. Depending on details to be provided by the developer next week, this could be a huge win for the community and those of us who have worked so hard to protect Seahurst Park.

The hearing began on July 8th at the ERAC/Highline School District Center with opening statements from NoSP (Neighbors of Seahurst Park) attorney David Bricklin, and attorneys for City of Burien and the applicant Westmark Development. Day One's proceedings included testimony from Dr. Vincent Perrone, a geotechnical engineer, and Dr. Sarah Spear Cooke, a Wetlands scientist who were retained by NoSP to analyze the adequacy of the environmental review undertaken for the project. Cross examination came from both Charlie Klinge, Westmark's attorney, and Bob Sterbank, contracted attorney for City of Burien from the firm Kenyon/Disend. Three lay witnesses (Burien citizens) also testified.

The hearing continued on July 9th, with testimony from five experts to defend the adequacy of the Environment Impact Statement, all called by the applicant, Westmark's counsel Charlie Klinge. Before the break for lunch, Ted Hunter/Hearing Examiner, made it clear to all parties that his intent was to finish the hearing at the end of the day. At that point in the hearing only two of Westmark's five witnesses had testified. City of Burien's contracted counsel Bob Sterbank from Kenyon/Disend had listed witnesses (current and former city officials) to testify but were never called.

At approximately 5:00 p.m. Westmark's fifth and last witness, Mr. Robert Thorpe, was nearing the end of his testimony and started to offer a "**list of possible additional mitigation**" for the Emerald Point project. On questioning by the Hearing Examiner, it soon became evident that these were not "possible" mitigation measures, but rather that Westmark was proposing a major down-sizing of the project. Due to these unexpected changes to the proposed site plan, the Hearing Examiner suspended the hearing to provide time for Westmark to better describe the revisions and to give the city and NoSP time to evaluate the revised proposal".

The revision included **eliminating two buildings and the swimming pool**, and **relocating the clubhouse and garbage pads** to a new location on site. The result would be approximately 22% less deforestation of the site, located at the toe of the slope on Westmark's property, reduced impervious surface, and a much bigger buffer and building setback for the wetlands and trails in the park. The number of units and parking will remain the same (178), with a change in design plan by removing all 3 bedroom units and converting to more 1 bedroom and studio units. More mitigation may be on the list, such as substituting pervious pavement for impervious pavement.

The Examiner directed Westmark to provide a written description of the changes by the close of business on July 15, 2013. The city and NoSP are to respond by July 22, 2013. The dates next week which had been reserved for continuation of the evidentiary hearing were stricken. If the revisions do not render the appeal moot, the plan is to resume the evidentiary hearing by August 15, 2013.

Prior to the surprise revision from Westmark, the biggest surprise of the appeal process had been the city's active defense in support of Westmark's position. Westmark retained a suite of experts and a well known law firm to defend the EIS and the permit. It hardly seemed necessary for the city to spend scarce taxpayer dollars to "double up" and provide an additional level of support. It also appears that the city manager and/or city attorney made the decision to spend taxpayer money defending Westmark's permit without fully informing the City Council as we can see no mention of this at any City Council meeting. If this happened in Executive Session then please correct NoSP. For its part, the City Council seemed to drop the ball in its oversight of the city manager's and city attorney's decisions to spend tens of thousands of taxpayer dollars echoing Westmark's position.

Worse, the city manager and city attorney hired an attorney from the firm Kenyon/Disend to defend Westmark's case against NoSP (a grass roots group of Burien citizens). This is the same law firm that just a few years ago was hired by and argued for the City of Burien against this land development project. Burien lost in that case and was forced to pay in excess of \$10 million dollars to Westmark. It startled observers to see this firm now arguing in favor of this development. To some citizens present, it appeared that Burien could have left Westmark to argue and defend its own clearing permit at this hearing.

The city's lack of action to protect the park is also evident from its reluctance to acknowledge the presence of extensive wetlands in the park and the impact the project could have on those wetlands and streams inside the park. For years and years, NoSP supporters have been trying to get the city to delineate the wetlands. We have done our own "citizen scientist wetland study" and the city will not acknowledge our findings with a dotted line (indicating "possible" wetlands) on park maps. The city refused to do a certified delineation, ignoring over 1000 signatures for a qualified wetland specialist to survey the wetland. According to Dr. Cooke, a well regarded wetlands specialist, the park is home to a "mosaic wetland" measuring over 26 acres in total. Not studying and acknowledging this wetland and the aquifer that feeds it will not make it go away. "Somehow, the City found money to pile onto Westmark's defense of the permit and EIS, but couldn't find the money to do a credible identification of the park's incredible natural resources. The city needs to re-examine its priorities—or we need to find new city council members who will," said NoSP volunteer Janis Freudenthal.

Regarding Westmark's last minute revision, NoSP volunteer Janis Freudenthal said, "Let's call this what it is. Obviously, Westmark didn't like how the hearing was going. They saw how powerful our evidence was about the impacts to the wetlands, landslide prone slopes, streams, fish and park trails. They had this fallback plan available if the hearing wasn't going well and pulled it out at the end to avoid a big loss. We will evaluate the proposal carefully with the help of our experts. There now are a whole new set of questions that need to be answered. The adequacy of the Environmental Impact Statement is the heart of our case. Despite the revisions, the project is still in landslide hazard and wetlands critical areas. **We will not be rushed in to a decision.**"

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website: seahurstfriends.org