

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal)	APL2017-0006
Application for)	
)	FINDINGS OF FACT,
Sudden Valley Community Association)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: The Appellant, Sudden Valley Community Association, has appealed a Decision made by Whatcom County Planning and Development Services, appealing the Notice of Additional Requirements (NOAR) associated with Land Disturbance Permit No.LDP2017-00053. The Appellants objected to mitigation requirements associated with phosphorus reductions in storm water runoff. An agreement was reached on what the appropriate mitigation would be, if required, and the permit was issued to facilitate the proposed work completion prior to October 1, 2017 (seasonal closure on exposed soils). The Appellants retained the right to challenge the phosphorus mitigation requirements in this Appeal.

Decision: The Hearing Examiner Upholds Planning and Development Services' Notice of Additional Requirements /Conditions of Approval, requiring the improvements to Sudden Valley Right-of-Way in order to reduce the phosphorus loading to Lake Whatcom from the Sudden Valley Road System.

FINDINGS OF FACT

**I.
Background Information**

Appellant: Sudden Valley Community Association

Site Location/Address: 4 Clubhouse Drive
Bellingham, Washington 98229

Assessor's Parcel Number: 370406 185101

Zoning: Residential Rural [RR3] – 3 dwelling units/acre

Authorizing Codes, Policies, Plans, and Programs

Authorizing Ordinance: WCC 20.84.240: Whatcom County Hearing Examiner Appeal

Applicable Whatcom County Codes:

WCC 20.51.420(1) Lake Whatcom Watershed Overlay District: Permanent Stormwater Management Systems - Exemptions

WCC 20.51.420(2) Lake Whatcom Watershed Overlay District: Permanent Stormwater Management Systems – Best Management Practices

WCC 15.04.020(B) Appendix J: International Building Code [IBC]

Exhibits

- 1 Administrative Appeal with attachments
 - 1-1 Letter dated July 13, 2017, from Wilson Engineering to Ryan Ericson re: LDP2017-0053 Land Disturbance Permit for 2017 SVCA Road Maintenance and Repairs Submittal of Appeal and Conceptual Mitigation Contingency Plan
 - 1-2 Appeal Statement, July 13, 2017, prepared by Appellants
 - 1-3 Fee Responsibility and Agent Authorization [Mitch Waterman], dated May 25, 2017
 - 1-4 Supporting Document #1 Whatcom County Council Agenda Bill [No. 2016-326], with attached Ordinance [Ord. 2016-054] and Exhibit A: Ordinance Establishing Sudden Valley Stormwater Improvements Fund and Establishing a Project Based Budget for Sudden Valley Stormwater Improvements Project
 - 1-5 Supporting Document #2, Wilson Engineering, dated June 1, 2017: Stormwater Management Manual for Western Washington [SMMWW] – Ecology
 - 1-6 Supporting Document #3, Wilson Engineering, Memo, dated May 11, 2017: Applicability of Stormwater Management Regulations to Project
 - 1-7 Supporting Document #4, Site Photos [2 pages, front and back]
 - 1-8 Supporting Document #5, Whatcom County Sheriff's Office Division of Emergency Management: Proclamation of Emergency, dated February 7, 2017
 - 1-9 Customer Receipt, July 13, 2017
- 2 Staff Report, dated February 12, 2018, with Attachment A [Exhibit 2-1]: 2017 Roads Maintenance & Repair Site Plans, prepared by Wilson Engineering, dated June 1, 2017, with Natural Resources Approval, stamped July 26, 2017
- 3 Certificate of Posting Notice of Public Hearing, dated February 20, 2018
- 4 Legal Notice of Public Hearing, dated February 22, 2018
- 5 Wilson Engineering, Letter dated March 5, 2018, to Whatcom County Hearing Examiner, re: Response to Staff Report

Parties of Record

Mitch Waterman, General Manager
Sudden Valley Community Association
4 Clubhouse Drive
Bellingham, WA 98229

Melanie Mankamy, P.E.
Wilson Engineering
805 Dupont Street, Suite 7
Bellingham, WA 98225

Michael Kershner, Natural Resources: Watershed Planner
Whatcom County Planning and Development Services

II.

The Sudden Valley Community Association has appealed a Decision by Whatcom County Planning and Development Services requiring phosphorus reduction mitigation as part of a road improvement project undertaken by the Association. The Association argues that the applicable Ordinance does not require mitigation for this project.

An Agreement was reached between the Association and Planning as to what appropriate mitigation would be required, if required. A Permit was granted and the work completed. The issue before the Hearing Examiner is to determine rather or not phosphorus reduction mitigation is required for portions of the road work undertaken.

III.

Planning has prepared a Staff Report, outlining Staffs' Findings of Fact and legal analysis, supporting their conclusion that portions of the road work done requires phosphorus reduction mitigation under WCC 20.51.420 (1) and (2). The Association agrees that the facts set forth in the Staff Report, Exhibit 2 in the Hearing Examiner file, are accurate. These facts are adopted by the Hearing Examiner, as Findings of Fact herein by this

reference. In summary, the facts show that the road work undertaken includes removing and replacing more than 1500 square feet of existing road, down to or below native soil levels.

IV.

Any Findings of Fact deemed to be Conclusions of Law are hereby adopted as such. Based on the foregoing Findings of Fact now are entered the following Conclusions of Law.

CONCLUSIONS OF LAW

I.

Clearing and grading projects within the Lake Whatcom watershed are required to be phosphorus neutral pursuant to WCC 20.51. The Association's road work project must meet the phosphorus neutral requirements, unless it qualifies for one of the exceptions set forth in WCC 20.51.420 (1). WCC 20.51.420 (1) (e) (ii) covers the work at issue here, and reads as follows:

**WCC 20.51.420(1)(e)(ii): (1) Exemptions. (e) Projects, work, or activities that will create less than:
(ii) One thousand five hundred one square feet of replaced impervious surface area and/or replaced permeable pavement area (per Chapter 20.97 WCC definitions).**

"Replaced impervious surface" is defined in WCC 20.97.342, as follows:

**WCC 20.97.342 Replaced impervious surface.
"Replaced impervious surface" means, for structures, the removal and replacement of impervious surfaces down to the foundation; for other impervious surfaces, the removal down to bare soil or base course and replacement.
(From 2012 DOE Stormwater Manual)**

A fact agreed to by the Parties is that the project includes the removal and replacement of more than 1500 ft.² of impervious road surfaces, down to or below bare soil. This exceeds

the exemption levels. Therefore phosphorus reduction requirements must be met. The Decision of Planning should be upheld and the Appeal denied.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The road project undertaken by the Sudden Valley Community Association includes the removal and replacement of more than 1500 ft.² of impervious surface and is required to meet the phosphorus neutral requirements of WCC 20.51. The Decision of Planning is upheld and the Appeal is denied.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is Final. The following review procedure is available from this Decision and may be taken by the Applicant, any Party of Record, or any County Department.

Appeal to County Council. Within ten business days of the date of the Decision, a written Notice of Appeal may be filed with, and all required filing fees paid to the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The Appeal Notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the Decision is clearly erroneous on the entire record.

More detailed information about Appeal Procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an Appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the Parties will be notified of the time and date to file written arguments.

DATED this 27th day of March 2018.



Michael Bobbink, Hearing Examiner