

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Thank you. The hearing will please come to order. Good evening, I'm John Galt, the Brier special hearing examiner. It's now 7 o'clock straight up pm, on July 30, 2009. I want to welcome you to tonight's open record hearing on the Sunbrook preliminary subdivision application of PDI Inc, which is being consolidated with an open record appeal by People for an Environmental Responsible Kenmore. Shorthand acronym of PERK from the state environmental policy act, whose acronym is SEPA... Mitigated determination of non-significance whose acronym is MDS... That MDS was issued by the city's responsible official for the Sunbrook application. So we've got two items that we're hearing together tonight. The preliminary plat and a SEFA appeal. The principal parties are PERK, the appellant in the SEFA appeal. The city of Brier's responsible official, which is the respondent in the SEFA appeal and PDI, which is the applicant for the underlying subdivision. It's important that the lay folks and the audience understand that the SEFA appeal is not challenging something PDI did. The SEPA appeal challenges something that the city did. I held a pre-hearing conference with the principal parties on May 21 of this year to work out the procedures for this hearing. One outcome of that conference was the adoption of the rules of procedure, which I used in the city of Stanwood. Our hearing tonight will follow the sequence for combined permit and appeal hearings set forth in rule 304E. For those who have the pre-filed exhibits, part of exhibit of B2 is a copy of the Stanwood hearing examiner rules. The sequence that will follow is in shorthand as follows. At the conclusion of my introductory comments, we will begin with direct testimony. The order of direct testimony will be the witnesses for the applicant, then the appellant, then the respondent and then the general public. That will be followed by rebuttal testimony in the same order. The hearing will close with optional closing statements in the order of applicant, respondent, appellant. Although during the pre-hearing conference, we discussed imposing time limits on testimony, rule 312A authorizes me to impose time limits. The parties did not feel that to be necessary. I went along with them. Now that I have seen the length of the parties' witness lists, I'm concerned that unless each party carefully manages and controls its witnesses, the length of this hearing may quickly get way out of hand. At this time, I am imposing the following time limit. Members of the general public, meaning those not called as a witness by one or more of the principal parties will be limited to three minutes each. As stated in rule 312A, time is not cumulative and may not be given or treated to any other party. Testimony shall be concise and non-repetitious. If I believe that the parties are not properly controlling the length of their presentations, I will impose additional time limits early in the proceedings. What that means simply is that I'm not going to wait until 5 o'clock tomorrow afternoon to decide that we need to impose time limits to keep us on track. There are many reasons why I won't very long to impose limits, but suffice it to say I will be considering that as I listen to your testimony this evening. In accordance with standard Brier custom, tonight's hearing will end not later than 11 PM. If we are unable to conclude the hearing tonight, we will reconvene tomorrow morning at 10 AM in this same location. And I now want to advise you of something that the principal parties do not know because I don't think I mentioned this in the prehearing conference and that is that I will endeavor to provide time this evening for general public testimony even if that means taking it out of order. The reason that I want to do that is because if you're here for an

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

evening hearing, it may not be convenient for members of the public to show up tomorrow sometime. And if you came at 10 in the morning, you still might know when would be your turn to speak. So at some point tonight, I am probably going to ask for a show of hands of how many members of the general public who do not expect to be called as a witness by one of the parties here and want to speak. And then based on that number, I'll figure out at about what time we need to break off everybody else and start listening to you folks.

Courtney Kaylor: This is Courtney Kaylor representing the applicant and we'd be happy to let the general public testify at the beginning of the hearing.

Hearing Examiner: I'd rather have the applicant start. Thank you. I appreciate the offer.

Paula Swisher: Courtney, you will need to make sure that you speak up loudly when you talk.

Courtney Kaylor: Can I turn this microphone more towards me?

Paula Swisher: You can turn it more towards you and then when other people need to use it, you can turn it \*\*...

Hearing Examiner: One element of tonight's hearing is a SEPA appeal. State regulation and case law require that the appellant bear the burden of proof. That accord substantial weight to the SEPA determination made by the city's responsible official and that the city's threshold determination be sustained unless the appellant shows the determination is clearly erroneous. The clearly erroneous standard means the action of the responsible official is not disturbed unless after reviewing all the evidence in the record, I'm left with a definite conviction that a mistake has been made. I cannot recommend that the city council reverse the action of the responsible official merely because I might have reached a different conclusion. I have also been charged by the city council with the responsibility to make a recommendation to it regarding the merits of the underlying Sunbrook's subdivision. My recommendation on the subdivision will be based upon the general review criteria for preliminary subdivisions, which are contained in section 16.16.020 of the Brier code. The specific review criteria contained in RCW58.17.110 as well as other relevant provisions and requirements of the municipal code, officially adopted city plans and policies, state law and rule and judicial precedent. All applied to the facts that are disclosed by the documents and the testimony that become part of the record of our hearing. I do reserve the right to take official notice of applicable case law, provisions of states laws and rules, provisions of the municipal code and the comprehensive plan. I do not anticipate making my recommendations on these matters at the close of the hearing. Rather within 14 days after the close the hearing record, I will issue a single consolidated written recommendation or to separate written recommendations to the city council. Please contact the city after my recommendation or recommendations are issued to find out

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

when it or they will be taken up by the council. A copy of my recommendation or recommendations will be mailed by the city to the applicant, to the appellant and to each person who becomes a party of record. Our hearing clerk, Miss Swisher who is seated to my right at the lower computer command center over there has a tablet on which you can enter your name and mailing address and thus become a party of record. Please make sure your entries are clear and legible. If you have both a street address and a PO Box, use the one that the Post Office likes when you get mail. Are there any questions regarding hearing procedures... Sir?

Unidentified Male: Is there a signup sheet at all for general public?

Hearing Examiner: To testify? No, not necessary.

Unidentified Male: It's first come, first serve?

Hearing Examiner: Yes. What I do is when the time comes for public testimony; I'll ask if there is anybody who wishes to be heard. If you fit into that category raise your hand I try to call on people in the order that I see the hands go up. If nobody raises their hand, I do it sort of like an auction, I'll ask three times and then I move on. If everybody raises their hand all at once then I usually just start at one end and start going down the line. I try to be as fair as I can. I do not and never have am not going to start tonight, divide the testimony into pros or cons or fence sitters. It's just if a member of the public wishes to testify, you're all in the same clump as it were. Any other questions about hearing procedures... Sir?

Unidentified Male: Is it possible for the city to come up with more chairs sir?

Hearing Examiner: I don't know whether it is or not.

Paula Swisher: Due to ADA compliance and the way the room is set up and \*\* chairs are available for everybody are out...

Hearing Examiner: Short answer's no, unfortunately. Any other questions on procedure... Are there any objections on jurisdictional grounds or concerns regarding conflict of interest? Hearing none, we will move right along. I will tell you that at this time that I made a brief sight familiarization visit this afternoon so I am generally familiar with the lay of the land and the vicinity of the Sunbrook site. However, and this is a however statement that I make at this point in every hearing that I have made site visit on. However, my site visit is a not substitute for your testimony and evidence. I don't go to a site to be an investigator or to be here and by my own witness. I go to the site because if I come here with a mental image of the area, it usually helps me better understand what you're trying to say to me. My background is a geographer. I can read maps upside down, backwards, usually with my eyes closed. A lot of people however have a hard time dealing with geographic things. North and south and east and west and even up hill and downhill get confused by some people, not just lay

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

people but professionals alike... And so I find that having gone to the site, I can help keep the record a little straighter because if you start telling me that the Sunbrook site is located on the west side of Brier Way, I'll say excuse me are you sure. And it will make you think. Oh dear, no it's on the east side of the road. So that's why I go. Bottom line if there are important things about the site and the surroundings that you think I need to know, it's up to you folks to get that information into the hearing record either through testimony, through documents or some combination of the both. I will also indicate to you that, my site visit was conducted entirely from public rights of way. I did not go through either of the barrier, one's a fence and the other's a cable that block easy access into the site. In the old days, 30 years ago, I probably would have climbed over for any number of reasons. Probably one of them is increasing age, but there are other more academic reasons why I don't really go onto sites anymore. I just see what I can see from the street and let it go at that. Okay that's the site visit. The principal parties were required to pre-file their proposed exhibits in accordance with a schedule that's set out of rule of procedure 224. Respondent city pre-filed this binder full of exhibits, which are B01 through B28. There B1 has a B1, B1A, B1B. The rest of them are just single numbers. Does either of the other principal parties object to entry of the city's pre-filed exhibits? Does appellant object to any of them? Appellant does not? Does applicant?

Courtney Kaylor: No.

Hearing Examiner: Applicant does not. Exhibits B1 through B28 inclusive are entered. Appellant PERK pre-filed exhibits P1 through P40. Does either of the principal parties object to the entry of PERK's pre-filed exhibits? Does respondent object?

Mr. Knutson: Can we defer to the applicant with \*\*?

Hearing Examiner: You want them to go first?

Hearing Examiner: Okay. Does the applicant object to the entry of any of PERK's exhibits?

Courtney Kaylor: This is Courtney Kaylor for the applicant. Yes, we do object to the admittance of a number of these exhibits. Starting with Exhibit P25 and running through P35. Also P37 and P39, we don't see how these exhibits are relevant to the actions before the hearing examiner. And I am happy to elaborate with record to each exhibit if that's helpful.

Miss Bowers: May I respond?

Hearing Examiner: Let's see. Miss Mooney.

Miss Bowers: I'm \*\*...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Who is the lead person for the person for PERK tonight? It's been Miss Mooney all through this thing right up to this second. Let me hear from Miss Mooney. Because what I want is a person at each table I can look to and know you're the speaker for that party and not have you all sitting their arguing with each other about who's got the right to speak. Who is going to be your lead tonight? You or somebody else...?

Elizabeth Mooney: We're volunteers.

Hearing Examiner: I know that.

Elizabeth Mooney: We're pro se.

Hearing Examiner: I know that.

Elizabeth Mooney: We are going to do our very best with Miss Kaylor and so we're a team.

Hearing Examiner: But who is your lead speaker tonight.

Elizabeth Mooney: Chris Bowers is going to bring in the SEPA witnesses. She has developed a relationship so she'll being doing the cross-examination and the...

Miss Bowers: And the presentation of our binder with 5 additional exhibits and our opening letter.

Hearing Examiner: We'll talk about your 5 additional exhibits later. Stay with the subject now. Let's not get off on a tangent here. All I'm trying to find out is when I have a procedural question, which one of your smiling faces do I look at. There are three of you there and I just want to look at one person and know that you're the one that can answer my question.

Miss Bowers: We might have to confer to be honest.

Hearing Examiner: That's okay. But I just want to know who's going to answer. It's going to be Miss Bowers? And you're name please.

Miss Bowers: Christy Bowers.

Hearing Examiner: Miss Bowers, Miss Kaylor has objected to the entry of Exhibits P25 through 35, 37, and 39. Do you want to argue for their entry? If there are any of them that you really don't care about, let's get them off the table first. If you want to argue for all of them and their importance then so be it and we'll hear the arguments.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: At this stage, all of these are connected to an expert witness. P25 through 35 are connected to an expert witness and they will be touching base on the majority of them in their testimony. And it's concerning the historical aspects of the community relationship at 0056.

Paula Swisher: You will need to speak up. It picks you up about half the time.

Miss Bowers: I'll repeat this. P25 through P25 are connected to the expert witness Miss Mooney who is a community person and stream keeper. And she will be testifying to the involvement of 0056 in the community for a number of years. The majority of these different exhibits in this thing are concerning points that she will be making in her testimony. P37 you said and P38?

Hearing Examiner: No, 39.

Miss Bowers: 39. Mr. Phillips and Mr. Halladay (ph. sp.) have written a letter. It's one of our exhibits. They will also be speaking. Mr. Phillips will be speaking and will be addressing that letter as well. 39, the map of Maple Brook is connected to Tim Dawson who is a neighbor of standing. He is adjacent to the property of Sunbrook on the south side in the Kenmore area.

Hearing Examiner: So what is Maple Brook?

Miss Bowers: It is the development to the south of Sunbrook in Kenmore in King County and he will specify where he lives on that lot.

Hearing Examiner: I will allow 39 if for no other reason on the basis that it shows me a plat of the adjacent property. That's your statement? I know that I don't have you sworn in yet as a witness. But that's a map of the plat immediately adjacent on the south?

Miss Bowers: Correct.

Hearing Examiner: I will overrule the objection as to 39. 39 will be allowed in.

Miss Bowers: And 37?

Hearing Examiner: The Muckleshoot Tribe has entered into an agreement with somebody about stream 56. What's that got to do with the SEPA determination in this case?

Miss Bowers: It has to do with the fact that the sedimentation that flows from upstream down to the mouth and it affects the Chinook salmon down below. And the Muckleshoots fish that area and they have a jurisdictional and tribal agreements with various parties, the city of Kenmore.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Courtney Kaylor: Mr. Examiner. The Muckleshoots are not a party to this proceeding. Stream 0056 does not run through project site as our expert witnesses will testify later. And the fact that the Muckleshoots have an agreement is not relevant to the design of the subdivision, its compliance with the Brier city code or to the impacts of the subdivisions. It doesn't address whether the subdivision will have impact.

Miss Bowers: May I respond?

Hearing Examiner: Let me see if the city... Are you totally out of this argument?

Mr. Knutson: Yes. Craig Knutson, special city attorney for the city of Brier for this hearing.

Hearing Examiner: And are you saying that the city really doesn't have a horse in this race?

Mr. Knutson: We concur with the position of the applicant.

Miss Bowers: May I respond?

Hearing Examiner: I am going to allow 37. It may or may not have much relevance, but I will allow it to be entered into the record. Now 25, a one page excerpt from Kenmore shoreline master program update draft... Number one a draft is totally irrelevant to me. Number two, the map doesn't show anything remotely close to the site other than the fact that there is a stream that heads in that direction.

Miss Bowers: Miss Mooney is a member of the Kenmore Shoreline Management board and so this \*\* and showing where Lake 0056 is coming into Lake Washington... And there are many cumulative effects at that area.

Hearing Examiner: Okay. I am not going to allow 25. There are numerous exhibits in this file that show the route of stream 56 that show its mouth. We do not need an excerpt from a draft city of Kenmore plan to do that for us. 25 is not admitted.

Miss Bowers: Can Miss Mooney comment on this?

Hearing Examiner: No. I have ruled. 26, what does a request to the King County board of supervisors for money for WRIA8 salmon recovery council have to do with the SEPA appeal in this case?

Miss Bowers: One second please.

Elizabeth Mooney: Can we talk because I didn't know that I was going to have my entire... Can we switch? This is like two months of work.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Miss Mooney...

Elizabeth Mooney: Can I just switch because this is the most important map. This represents Kenmore, the fish, the Muckleshoots and a huge shoreline master plan update.

Hearing Examiner: Miss Mooney, it is a draft.

Elizabeth Mooney: No. This \*\*...

Hearing Examiner: A draft document is not reliable.

Elizabeth Mooney: This is our ongoing plan in Kenmore.

Hearing Examiner: It says it is a draft document. Draft documents are legally not usable by you, by the city, by the applicant, by anybody. Until it's been adopted, it's a draft. And until it's adopted, we have no clue that it will ever be adopted the way it shows on that piece of paper. That's why legally I cannot rely on a draft, period.

Elizabeth Mooney: Can I use it as a picture?

Hearing Examiner: No.

Elizabeth Mooney: So, not even for...

Hearing Examiner: No ma'am.

Elizabeth Mooney: For site visits...

Hearing Examiner: No ma'am. There's a zillion other maps, aerial photos, etc that show that stream all the way down to its mouth and if you need something to point to to say I went here and saw this, there is a ton of other exhibits here.

Elizabeth Mooney: The reason that I chose this with our lawyer and we discussed it is because this represented a year and a half of human beings in Kenmore, citizens' advisory \*\* planning commission \*\*...

Hearing Examiner: I have ruled. I don't care how many people were involved in it. It's still a draft map. Let's not beat it to death anymore. Let's move on.

Elizabeth Mooney: Can I speak on these is because what's happening is that Chris  
\*\* ...



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: All of these are connected to her testimony. And they're part of her testimony. On the water situation there are Exhibit 26, there are a couple of other expert witnesses who will refer to water \*\* as well and various pieces... There are another couple of exhibits connected to it \*\* and the salmon recovery and the importance that has because wire 8 is a complicated...

Hearing Examiner: But this letter is a letter from a group of people to another group of people asking for money from the second group to be given to the first group.

Elizabeth Mooney: I have to speak because she doesn't know why I put these in here.

Hearing Examiner: Miss Mooney tell me why I should admit 26.

Elizabeth Mooney: We're getting ahead of ourselves here.

Hearing Examiner: No.

Elizabeth Mooney: I will tell you why okay. I am a volunteer. I have about 10 boxes that represent this stream in my house spread all over the place. For me this was going to cause less grief for you as the hearing examiner if I put this in and I could point to a very simple list of cities that are involved in a big organization to save salmon and in the greater Lake Washington area. What this was to point out for you... What I was planning to use was this to say, this is just the tip of the iceberg. But it represents over two years of my volunteer efforts to try to get Brier to come to the table to do an inter-local agreement for stream 0056. Over two years I've asked them to come down here.

Hearing Examiner: Okay let's not go too far. You're starting to testify serious stuff and I don't have you under oath and I'm not going to do that now because we're just trying to enter exhibits.

Elizabeth Mooney: That's why I'm very worried that my attempt to put in a few tip of the iceberg just so that I could get my three minutes later would be...

Hearing Examiner: You're not limited by the three minutes so don't make it sound like you are. You know better than that ma'am. I said members of the public who are not \*\* are limited to three minutes. I didn't say principal parties. Miss Kaylor do you want to chime in with any argument on this, you've heard some of the justification for it. Do you still want me to toss 26?

Courtney Kaylor: Mr. Examiner, I do. I think we're getting a little far afield from the subject matter of this hearing, which is the Sunbrook plat and whether it complies with the ordinances of the city of Brier.

Miss Bowers: The conjunction is though that Sunbrook plat is at the northern edge of this and it's a large development that's going in and there will be many

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

consequences downstream. Many of them adverse to a variety of projects that are going on as well as to the mouth and the projects that are going on south of 522... And so Miss Mooney as the expert of having worked on this and done many of these projects over the last 8 to 10 years and these evidence pieces are showing the problems that have been going on there and how Sunbrook has the potential of destroying them.

Elizabeth Mooney: It will cause a significant adverse environmental impact if these exhibits are not put in here. That's my position. And I have worked my heart out on this stream as a volunteer.

Hearing Examiner: I don't doubt that all. The question is whether the document is relevant to the issues that are involved in tonight's hearing, not whether you've been intimately involved or extensively involved in a stream keeper's process. Those are two very different questions. The answer on number 26 is I am not going to enter 26.

Miss Bowers: Would it be possible to hold off ruling on the rest of these relevance's to see if they are relevant during the testimony?

Hearing Examiner: No, not at this point... 27 is a letter asking the city to join in a program. What does that have to do with...? I understand that it relates to this stream effort that you're working on, but does the have a direct bearing on Sunbrook's plat.

Elizabeth Mooney: This is Wendy Abbey. She is a member of the public. She couldn't be here tonight. She wrote a letter to Mayor Kalinas (ph. sp.). It's very relevant to Brier. She asked him to come to the meetings that I was making reference to that... When Mr. Cutts was the community development director, we asked Mr. Cutts to come. We asked Rich Maug (ph. sp.) to come.

Hearing Examiner: Okay again...

Elizabeth Mooney: And this is representing the people of Brier who wanted to join in taking care of their stream. Their streams were at risk. They were at risk of having a significant adverse environment impact unless they reached out and to the community and Lake Forest Park and Kenmore who both contribute the communities around the stream. They were trying to...

Hearing Examiner: Thank you. This is a year and a half old email about a meeting that was then going to be forthcoming. A planning meeting... What I'm sure was and is a very valuable policy and planning program, but I do not find that it has any bearing whatsoever on the impacts of this proposed subdivision on this stream. 27 is not admitted.

Elizabeth Mooney: Actually it did have to do with... At the time Sunbrook was involved.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: 27 is not admitted. 28...

Elizabeth Mooney: This had to do with the Lockwood Elementary school of which one of them is related to one of the developers of Sunbrook so it's right there under Justine Hurley and Marty Peak (ph. sp.) and the Vaughns (ph. sp.) are related. The son is in the Lockwood program. The grandson's grandparents live on the stream next to Sunbrook and the Vaughns (ph. sp.) are part of the developers. So that's what that relates to as well as the fact that this is showing the history of the stream and the projects that have been done downstream and that there have been numerous things done through the school and the students have been actively involved with the preservation of 0056 south of Sunbrook. What will happen to the stream of Sunbrook will significantly adversely impact all those projects?

Hearing Examiner: The paragraph that's allegedly relevant is the one about Hurley (ph. sp.) and Pete.

Elizabeth Mooney: Those are the teachers that...

Hearing Examiner: Is that the paragraph?

Elizabeth Mooney: Yes. That is the only \*\*...

Hearing Examiner: It never mentions the stream. It doesn't mention anything about the stream.

Elizabeth Mooney: The stream stewardship program developed by Justine Hurley and Marty Pete (ph. sp.), it does mention the stream. And it is the stream. And actually they call it Abbey View Cemetery. This is the stream and I can give you more information if you want. I can go get it. The stream \*\*...

Hearing Examiner: The relationship of the owners and who lives where is not relevant to the impact of the plat. And that two teachers were recognized by King County for their work does not have a direct bearing on the impact of the plat.

Elizabeth Mooney: Well King County gave the developer native plants on the land. The developer is one of the groups with the Sunbrook... It seems a little bit hypocritical to take money from King County and then ask to develop the very same stream, not give it proper buffers so we're trying to teach the children \*\*...

Hearing Examiner: If I recall correctly, you have said that I believe it's in your opening argument. I think it's P1 talks about that because you specifically mention names in that document that are actually not even mentioned here. So you still have that information in the record even after I refuse to admit 28, which is what I am going to do. 29, a copy

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

of an article where Miss Mooney was given an award for being a stream keeper...  
What does that tell me about the impact of this plat on the world?

Miss Bowers: Again it's showing the historical aspect of the project. The Seattle Times thought it was pertinent enough to send out a report to interview here and discuss the various projects that she'd been working on. And again, it points to the significant adverse impact that Sunbrook will have on the downstream situations.

Hearing Examiner: I can accept what you said right up to the last clause. There is nothing in this article about Sunbrook.

Miss Bowers: It's showing historical of what's going on the stream south. It's talking about what's going on the watershed approach. There are numerous projects south of Sunbrook and if Sunbrook is approved in its position now, it will have large adverse areas.

Elizabeth Mooney: SEPA requires that you consider other jurisdictions. And you must consider proposals of other agencies and other jurisdictions. This particular situation was talking about how we worked with a developer. We worked with the Native American names. SEPA must consider impacts that go beyond the jurisdiction of Brier.

Hearing Examiner: Yes but the impacts that we consider are the impacts of the proposed project, not the impacts of some project that was more than 5 years ago because this article is 2004.

Elizabeth Mooney: This project that this newspaper article was written about had a blowout of sediment fairly recently on the same street that the Sunbrook property plans to put their detention vault water.

Courtney Kaylor: Mr. Examiner, if there is information that maybe relevant to the impacts of the Sunbrook plat than certainly that can be provided and testimony, but it's not contained in this exhibit.

Miss Bowers: The testimony would expand that. It would be able to expand upon that and we have other exhibits that are connected to these problems that have occurred in other developments downstream.

Hearing Examiner: I am going to let 29 stay in, however I want to make sure it's crystal clear, you cannot prevail by simply showing that some other project someplace else in the world had a problem. You can't tar and feather the current applicant based on what somebody else did. I can't legally let you do that. So keep that in mind as you want to talk about this. If you're going to say that this project will have the same end result that that one did, then you're going to have to be presenting evidence to show that the conditions are the same, that the standards under which it was developed are the same, and that the manner in which it was developed will likely be the same. You can't just

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

simply say some other developer some place had a disaster ergo this one will be a disaster too. That's not legal. 30, is the picture of the project that we were just talking about in 29? Trillium...

Elizabeth Mooney: No it is not the same project.

Hearing Examiner: Then how is this one... Where's Trillium?

Miss Bowers: Trillium is on 55<sup>th</sup> Avenue northeast in Lake Forest Park. It was the first of several...

Hearing Examiner: That would be south of this...

Miss Bowers: Correct. It is one of the first development out of four that have gone into that area within a quarter mile of Sunbrook and the water problems that they have created large flows of sediment downstream, which caused property damage at the mouth of 0056.

Elizabeth Mooney: And Brier and simultaneous developments are supposed to be included in the SEPA considerations.

Hearing Examiner: We'll let you argue that point later. I'm going to allow 30. 31, a proposal for a swimming beach... Try and convince me that that's somehow relates to the impacts of this project.

Miss Bowers: Well, essentially Kenmore has been trying to reestablish and restore a swimming beach that's in Log Bloom (ph. sp.) park. It is within a few hundred feet of the mouth of 0056.

Hearing Examiner: Is your argument in regard to a number of these that I've tossed so far, is your argument that if any development occurs anywhere on this stream in the future, it's a disaster and it will prevent swimming beaches and it will prevent clean streams and so on and so forth? Is that the crux of the argument?

Miss Bowers: The Herrera report has \*\*...

Hearing Examiner: Don't tell me what the Herrera Report talked about. Tell me what the crux of your argument is.

Miss Bowers: The crux of our argument is that we feel that the projects have all had significant adverse impact downstream...

Hearing Examiner: And this one will too.

Miss Bowers: Yes.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: And therefore everyone will in the future.

Miss Bowers: Not necessarily. If they are done properly and that's one of the issues and one of our arguments is that this needs to be done in a different manner because this one is now going to be constructed similarly to the other ones that have failed. And since they've all been done on the same watershed and within less than a half mile of each other and many... And several of the technical people have worked on more than one project.

Hearing Examiner: 31 is too far a stretch. 31 is not admitted. 32, petitioners reply brief from a lawsuit in 2004. PERK versus the city of Kenmore and a couple of other entities. Is this the one that was talked about in 29? Yes, in 29.

Miss Bowers: No, this is a different one. And a number of the technical people that are working on Sunbrook worked on this particular development.

Hearing Examiner: Okay, that's great. Why does your opening brief have any relevance to this project?

Miss Bowers: Again the work that was done didn't cover all the information. There were mistakes made on the technical level. It ended up in a lawsuit in superior court. We settled out of court at the very last minute after many delays. And created a large buffer zone area for the wetlands that were on that property and the creek that was on there...

Hearing Examiner: The problem that I have with this exhibit 32 is that the topics that the attorney is arguing about have absolutely nothing to do with this project or this site. He's arguing among other things that the hearing examiner decided that there was a ditch and not a stream. No one is arguing that here. It's not the same stream.

Miss Bowers: It is the same stream \*\*...

Hearing Examiner: He's arguing about race judicata (ph. sp.).

Miss Bowers: It is the same stream \*\*... It's 0056. It's another \*\*...

Hearing Examiner: But it's not the one on this site. Nobody has argued that any... Nobody has argued at least not in any of the papers that I've seen that either 56 or the stream that crosses the property and we can debate whether that's the same stream or not later and I'm sure you folks will, nobody has said that it's not a stream. So half of this brief which is all about the fact that somebody in another case decided something wasn't a stream is irrelevant.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Elizabeth Mooney: I believe that they call it Abbey View drainage and I believe that is part of the problem is that Brier's critical areas ordinance has called it Abbey View drainage and has not given it a 100 foot buffer and \*\*...

Hearing Examiner: But Miss Mooney that's not the issue in this brief. This brief is arguing that it was called a drainage ditch. Whatever this thing was that they're talking about and nobody in this proceeding is calling it a drainage ditch.

Elizabeth Mooney: Well it's a drainage ditch versus... It's the same result. Drainage ditch is the same reason that they're calling it drainage conveyance. It's the same principal. It's exactly the same principal and Kenmore...

Hearing Examiner: No. I respectfully disagree. Other topics that are discussed in this brief are a decision by that hearing examiner to segregate the SEPA and the plat hearings. We are doing exactly the opposite. The whole part of this brief which is arguing that is totally irrelevant. I find 32 to be irrelevant and will not be admitted. 33, I will allow. That's your invitation to the public to come to tonight's meeting. I am not going to argue that that's not relevant to this proceeding. So 33 is in. 34, is this like... Is this a project like 30? You were right with your first guess. Same idea, same principal, what you're trying to show...?

Miss Bowers: Yes.

Hearing Examiner: Okay. I allowed 30. I will allow 34. And 35, a whole bunch of pages starting with frankly in my copy a barely legible stop work order. But what's this all about?

Miss Bowers: It's concerning the definition of the stream 0056 \*\*...

Elizabeth Mooney: This is another example of the simultaneous and cumulative... This is the Osgood (ph. sp.) property in Lake Forest Park \*\* that also has \*\*...

Hearing Examiner: Is this related to the photograph?

Miss Bowers: Yes.

Hearing Examiner: I will admit it. Are there any other objections to PERK's exhibits?

Courtney Kaylor: No other objections.

Hearing Examiner: Thank you. I will admit, let's see if I've got this straight, P1 through 24, 29, 30, 33, 34, 35, 37, 39 and you didn't challenge 40. So 40 goes in too.

Miss Bowers: What about 38?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: She didn't challenge 38. Thank you. 38 goes in.

Courtney Kaylor: And 36.

Hearing Examiner: And 36 goes in. P1 to 24, 29, 30, 33, 34, 35, 36, 37, 38, 39 and 40... I have I finally got it right? Okay those exhibits are admitted. PVI pre-filed exhibits S1 through S16. Does either of the other principal parties object to entry of PERK's pre-filed exhibits?

Mr. Knutson: The city does not object.

Elizabeth Mooney: We do not.

Hearing Examiner: You do not. I do. Just to make life interesting, I do. Exhibits S6 through S15 are resumes of PDI's expected witnesses. The rule of procedure, which is 224D something like that, says that witness lists and resumes are not expected to be entered as exhibits so I don't ask parties to assign exhibit numbers to them. PERK did not assign exhibit numbers to theirs. The city didn't list any expert witnesses. Why should I put your witnesses' lists in?

Courtney Kaylor: On that basis we will withdraw Exhibits S6 through S15, however in the alternative instead of them being exhibits, the witnesses that testify we will provide them as the resumes of our witnesses without exhibit numbers as PERK has done.

Hearing Examiner: I'll take care of that. S16 is listed as the exhibits listed on the city of Brier's exhibit list. Now technically therefore you should have provided another binder like this one to go with that little one liner. I don't think we need two sets of city exhibits in the record. And I appreciate that maybe you were trying to say we agree with these things or what have you, but that's unnecessary. Once one party's put them in, they're in. I am not going to admit S16 because it would be nothing but readmitting this book all over again. So 16 is out. Now what I am going to do is direct the clerk to maintain the file documents as they were submitted. So the ones that I have said are not admitted for evidentiary purposes or PERK's will still be in their binder. I do not want the clerk to take them out and throw them away. Leave them in there. If it goes up on appeal, the court can look at the ones that I tossed and decide whether it was right or wrong. That will also put PERK's resumes, which are in the binder that will put them there if anybody wants to look at them. I put your exhibits in a binder. Your resumes are part of the stack just like PERK's are at the back of their exhibits, yours will be at the back of yours. They just aren't admitted as exhibits. So yours will be there. You don't have to try to hand them later to me as we go.

Courtney Kaylor: Thank you.

Hearing Examiner: Okay. We're almost at the end of the introduction. Rule procedure 224C calls for me to assign A exhibit numbers to administrative exhibits. The following



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

documents are entered under that authority. And I sent an email to the principal parties today identifying A1 and A2 and telling them that there was going to be another A1, but I didn't give them a number for it. What I will do very briefly for the audience is tell you what these are. And let me just give you a very brief piece of background that will make it a lot simpler to explain what the first group of these A exhibits are. We were originally scheduled to have this hearing on July 7, I think it was. Something like that... I had to have emergency surgery a little bit of which is still visible on my neck the middle of June. And I'm fine. Everything worked out perfectly and in fact I actually could have done this on the 7<sup>th</sup> although my doctor told me that I wasn't supposed to do anything for two weeks. By the 7<sup>th</sup> of July I was getting very antsy and bored. But what I had my wife do when I got into the hospital, which was all unexpected, was send emails to parties that I had things pending with and tell them what was going on. And one of those that got that was Miss Swisher because of the hearing that was scheduled for a week or two after this was all happening. And then following that there was a whole bunch of emails back and forth among the parties as we tried to pick a new hearing date. So I think because the order memorializing the prehearing conference says that the hearing is going to be on July 7<sup>th</sup> and here we are on the 30<sup>th</sup>, I think the record needs to the documents that explain why we didn't do it then and how we got to today. So exhibit A1A is the email that my wife sent out telling people that I have this emergency situation that had to be taken care of... A1B is an email string that occurred between June 19<sup>th</sup> and the 22<sup>nd</sup> involving Miss Gaudette, Miss Mooney, Miss Swisher, Miss Mooney, Miss Newman and myself. That was all scheduling. A1C was a separate email string between June 25<sup>th</sup> and July 1<sup>st</sup>. The participants in that string were Gaudette, Galt, Mooney, Kaylor, Galt, Galt, Mooney and Galt. And the last one of those was where I said July 30<sup>th</sup> so that gets us to today. One thing that has not been pre-filed by any of the parties is a copy of the documentation for the issuance of the public notice for tonight's hearing. I have directed the city clerk to assign Exhibit A2 to that material. In addition, this afternoon I generated and sent to the principal parties a list of questions. Exhibit A3A is the transmittal email that I sent out when I sent those questions and A3B is the list of questions. For the benefit of the audience, I'm going to take just a second to read a couple of sentences out of that transmittal email because you may wondering, questions? What questions? In preparation for our hearing, I've developed a number of questions that I hope to receive answers. I usually simply ask my questions as the occasion seems appropriate as the hearing goes along, most typically between the direct testimony phase and the rebuttal phase as some of you in the audience from having participated in hearings with me elsewhere in the past. In one very large recent case which I know at least one of you in the audience is already recognizing this case. I provided a copy of my core questions to the parties partway through and it turned out to be really great. Now that case went on for several days and so the parties actually had time to think about them and the principal parties all came back with nice typed written answers, which was a boon. I realized that I put these together too late for that kind of benefit. But I thought this afternoon that it would be beneficial to the principal parties to get these questions. There is nothing secret about them. There are just things that as I read through this multiple stacks of paper, I haven't really found answers to that bothered me. And that somehow or other I'm hoping to

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

hear the answer to during the hearing. So what I've done is provided them three pages of questions. Actually two of which are relevant anymore because the last group dealt with exhibits P25 through 39. So really we're down to two pages of questions that go through 43. And they run the gamut from things that I think are typos in reports that I want to get clarified to significant issues of sort of philosophical things that I expect the parties will enjoy chatting about at the appropriate time. And so that's what the questions are. Each of the principal parties has their set of questions. So that's exhibits A3A and A3B. I have read all of the pre-filed exhibits including the ones that I have refused to admit tonight. I am very good at being able to ignore exhibits that I have seen but that I then subsequently leave out of the record. So the fact that I've read something doesn't mean that it's going to color my decision if it didn't come in as an exhibit. I will just put blinders on and pretend it's not there. But I have read all of these. I've read your reports. I've looked at your maps. I've looked at your photos. I would ask, especially the professionals for both sides that are going to be testifying in this hearing please remember that when you make your presentations. You don't have educated me about what's in these reports. What you ought to be doing is telling me... Frankly if it were me doing it, I would probably be spending my time rebutting the other guys stuff right off the get go. But I know a lot of people don't do it that way, but that's the way that I go about it. Clarify things that you think are confusing. Let my questions be a guide, if any of them fit into your areas of expertise. Things that I obviously didn't quite get right, hone in on things like that. Members of the public, you can just testify about whatever you think is necessary and appropriate. We do have two things going here. One's we got a SEPA appeal. We've got a plat hearing. If this were just the appeal hearing, I would run it much more tightly than I will be able to run the hearing tonight. I've got to meld these two. State law says so. It's not my choice. Believe me it's not my choice. And so you can testify about either the appeal, which has certain very specific issues which the appellant knows they can't expand. They're stuck with the issues they raised. Or you can talk about the plat and in talking about the plat you can talk about anything relating to the plat. Don't worry, frankly about which one you're talking about unless you're one of the experts and you know really what you're doing. Just tell me what you think I need to hear about the project and I'll sort it out in my mind whether it applies to the appeal, the plat or to both. And there is a lot here that I'm sure that will apply to both. Believe it or not, one hour after we've started we have entered our basic group of exhibits. You've heard all of the explanation that I can possibly think of that would help you and it's time to start hearing from you folks. Miss Bowers are you still the spokes lady?

Miss Bowers: As much as I can be, yes.

Hearing Examiner: Do you want to start testifying or do you want to call a witness first? Where do you want to go from here?

Miss Bowers: We have our notebook that we would like to submit with our opening letter in there and then we have an addition of five new exhibits that we would like to have accepted as well.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Okay at this point let me swear you in. Raise your right hand please. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Miss Bowers: Yes.

Hearing Examiner: Again for the record this is Christy Bowers. Question from the city's attorney...

Mr. Knutson: Are switching the order from what the rules says?

Hearing Examiner: I apologize. Thank you. It's not your turn yet. It's the applicant's turn. Thank you Mr. Knutson. Miss Kaylor, do you wish to be sworn. I know you're an attorney. Most attorneys don't, some do. So I ask.

Courtney Kaylor: I do not, thank you. This is Courtney Kaylor. I am the attorney for the applicant PDI. And we will open with PDI's presentation on the Sunbrook subdivision. As PDI's witnesses will testify, the subdivision meets all of the requirements of the city code and should be approved. We have six witnesses on the subdivisions. Jim Egge will address the plat history and provide an overview of the subdivision. Ken Lowzner (ph. sp.) will address storm water and other civil engineering issues. Dan Harvey will address tree retention and replacement. Ed Sewell will address wetlands and habitat. Carl Hadley will discuss fish and Rob Long will discuss traffic. And we will make every effort to be concise in our presentation.

Hearing Examiner: Who do you want to have first then?

Courtney Kaylor: Mr. Egge.

Hearing Examiner: Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Mr. Egge: I do. My name is Jim Egge.

Miss Bowers: Are we \*\* the SEPA hearing...

Hearing Examiner: When does the public get to speak? I said sometime before 11 o'clock. Miss Kaylor may have thrown you a slight curve. Remember she asked and said that they would be willing to defer and let the public go first. And I said no. And frankly the reason that I say no is what I hope is practical. There probably may be people in the audience that may want to speak, but they haven't seen the plat. They don't know what's going on. And I think they're testimony would mean an awful lot more to them and to me, if they've had a chance to at least hear the applicant explain what it is they want to do before we expect them to come up and start talking about it.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: I was just getting mixed up.

Hearing Examiner: That's okay. Join the crowd. I got the order wrong just a second ago. So we're doing just fine. Mr. Egge.

Mr. Egge: What my part of this this evening is to initially begin to describe a plat that has been around the city of Brier for several years. I have been involved in that during that time. And take you through what has essentially been a metamorphosis of the original plat configuration and design, the elements of the plat, how they've changed over time and how it's been a process that has resulted in a project that we feel should be approved tonight on its merits. One of the city of Brier's ordinances require is that you have a pre-application meeting on a subdivision. It's a requirement of the subdivision code. I would note for the record that that meeting was held on December 5, 2005. Pre-application meeting was held at that time with Mr. Swim (ph. sp.) who was at that time the city planner and that element of the required portion of subdivision submittal was met at that time. An initial preliminary plat design was developed over the ensuing several months. And on June 8, 2006 the initial plat of Sunbrook was submitted to the city for review. It was a 30 lot layout at that time with a formal plat application and at that time there was a large piece of property... You may have noticed that some of the exhibits refer to 15+ acres or some of the correspondence in the documents that you've received; some refer to 13+ acres. The initial application was 15 acres. Some subsequent boundary line adjustments occurred and the area that is currently before you is 13.7 acres. At that time, isolated wetlands A and B as you'll here discussed this evening were proposed for fill in the original layout that was submitted in June 1006. A traditional padded grading was proposed at that time. And pretty much a typical subdivision that you would see in Southwest Snohomish County from time to time is what was initially submitted. That date is of note as you look at the history of the case. Because under RCW, within 28 days the applicant is supposed to receive an evaluation letter from the city noting either that the application is complete for vesting purposes or it is or was not submitted in a complete fashion. That letter never went out. So the applicant's position and we discussed with city staff, we believe that they agree, is that for regulatory purposes the Sunbrook subdivision vested on June 8, 2006. And that the ordinances that were in effect at that time... You'll note in my subsequent discussion of the design that is before you tonight, we have incorporated elements of ordinances that have been passed since that time voluntarily. For instance, the tree preservation ordinance which we made part of our proposal... But regulatory purposes June 8, 2006 is the date. On July 31<sup>st</sup>... I am going to give you a couple of significant dates. I am not going to bore you with too many, but kind of the key dates that relate to the discussions that are going to ensue here. On July 31<sup>st</sup> 2006, the Army Corp of Engineers issued a preliminary jurisdictional wetland determination on the site identifying and confirming the wetlands that are present. Confirming that isolated wetlands A and B were outside the jurisdiction and that wetland C was a riparian wetland as reflected on the map exhibits that were in that delineation. It is off note that the applicant at that time under Army Corp regulations presume that wetlands A and B

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

would be filled. And that was later changed in terms of how they proposed to approach that. On September 6, 2006 Brier completed its initial environmental review, cited several concerns including the type and amount of grading that was being propose, lack of tree preservation and the fact that a very traditional development approach was being taken to this site. The proponent followed up with staff and basically began to make negotiated changes in the layout that addressed these concerns through the fall and early winter of 2006. During that \*\* course in November of 2006, the city adopted the 2004 comprehensive plan update. However the comprehensive plan that applies to this property under vesting, we believe is the 2000 Brier city comprehensive plan. Staff, and I won't go into them individually has cited several comprehensive plan policies in their staff report to the examiner this evening and I verified that those policies were in effect in 2000 and were carried forward into the current plans so that there's no inconsistencies on the ones being proposed. We agree with those policies.

Courtney Kaylor: I am going to interrupt Mr. Egge briefly. The applicable comprehensive plan is on the city's website. I did print copies of the land use element and the housing element if you would like a copy for your file.

Hearing Examiner: I appreciate the offer, but I have kept the 2000 version, the 2006 update and the 2008 update for all of the sections that have them so I've got three land use elements, etc, etc. I can go to anyone that you want and use any of them. So I'm good to go.

Mr. Egge: I would also note Mr. Galt that on the same date, November 14 2006 that the tree preservation ordinance that we know it, chapter 18.20 was adopted under ordinance 340. Through the late fall and early winter as I mentioned of 2006, Phoenix and Brier began to address issues with the initial plat layout. Possible private roads and a hammerhead turnaround versus a full cul-de-sac at the northeast corner of the plat, covered detention vault versus open pond to minimize clearing and grading impacts, and reduced clearing and grading at initial plat construction is needed to install necessary plat improvements only. And also provision of a soft surface trail through a large open space tract on the east boundary, preservation of significant vegetation, total preservation of the two isolated wetlands A and B that I spoke of, also reduction of traffic impacts onto 241<sup>st</sup> Place to the north of the subject property. The initial plat submittal had a road connection to that point through a lot in that plat that was later abandoned in favor of a looped road system in the proposed plat that was being configured at that time. Just for the record for those are not familiar with the site, I believe we're looking at B-18, is that correct on the wall? Or a portion of it...? Is that the correct exhibit number?

Hearing Examiner: That would be one of the sheets.

Mr. Egge: That's the cover sheet from city exhibit B-1A. And I would just refer to that generally as I get into a description of the site which I will do in a little bit. Just generally B18 is what I am going to be referring to, which is the final revision to the plat

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

that happened later. But I kind of wanted to \*\* into some things as I go through this... On August 10, 2007 we submitted a revised plat which was the first revision to the original layout. It was 29 lot plat was submitted. It addressed the concerns that I just mentioned with a looped interior road design, a reduced \*\* section of private road along the eastern loop and into the northeast hammerhead... And the point of that was to begin to incorporate the flexibility afforded by Brier municipal code under lot potential mitigation the goal of which is to through flexibility reduce impacts on critical areas. So by reducing the right of way in the private road, narrowing it up a bit, less impervious and also less impact and what resulted was essentially the layout has not changed much from that time on the hammerhead. But minor buffer intrusions that would be permitted by the LP\*\* section of the code for the road only that routes up next to it, touch a portion of the buffer... And site rating was radically reduced, substantial tree preservation proposed, nearly two acres of permanent open space including an active recreation element was created along the southeast boundary of the plat. A number of revisions and additional supporting studies were submitted through August of 2007 up into March of 2008 and the city has listed those in there chronology so I won't mention them individually. But that culminated on June 3 of 2008 with in cooperation with the city, the applicant agreeing to a phased approach to clearing and grading of the site. Essentially the first phase being three phases to the process... the first phase being \*\* described in the MDNS, but the first phase being primarily clearing only related to an installation of the plat related improvements adjacent utility corridors, storm drainage, detention vault, and those types of activities. The second phase then calling for another visit by the city staff and the applicant to determine if there are other trees that are dangerous or should be removed.... And then finally, the last phase perhaps the most significant change from a normal subdivision although of this is because it would normally all be taken care of that onset of the plat construction is that the individual lot clearing has been left to the builder to propose a development plan for his lot to the city with building plans and then justify any tree removal any grading that's associated with that on a per lot basis. That won't be done by the developer of this plat. The applicant also agreed to tree preservation condition in the MDNS part of the revised plat proposal. As I said, even though it was vested prior to adoption of that ordinance. On July 28 of 2008 in the second plat revision was made to the city. Again it was a 29 lot plat with supporting revisions to studies and additional analysis. Key revisions then in concert with the MDNS included substantially reduced and phased clearing, grading, and also relocation of an offsite sanitary sewer storm route which was previously proposed to go south across the Abbey View drainage into the plat of Maple Brook to a route that would run east along the north side to a plat to the east called North Lake Hills to 224<sup>th</sup> Place West. Or as it's known in King County, 60<sup>th</sup> Avenue I believe northeast if I'm correct. So those were some additional changes there. One of the questions that you sent out in an email today is that the homes east of the subject property that the sanitary sewer routes through in the existing easement, how many of those ... And I think your question... I can take care of that right now. Are the four septic systems to be removed those on the lots through which the easements have been granted. Listen carefully because it's a little bit of a complex answer. Lot, I think it's 16 at the southwest corner of 24<sup>th</sup> Place West and 243<sup>rd</sup> Place Southwest just east of the plat, it's the furthest

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

east lot over to 24<sup>th</sup> already has sanitary sewer even though an easement is being granted along its boundary. So that one is already connected to sewer... The two west of it which would be 17, 18 and the one next to that 19 are currently on drain fields, but they also have an easement that's been granted along their south property line. They will be connected to sanitary/sewer. One lot that currently does not have an easement over it as shown there along the south line \*\* next lot up for it, which at one time PDI was negotiating a potential sewer route between a couple of the lots on that lot and in keeping with good negotiations those folks agreed to continue to hook them up. So in the final construction plans, sewer will be routed from the plat to that home on lot 20. So that clarifies that question. And of course the added side benefit is that we remove those drain fields from proximity to the stream corridor. On August 7 of 2008, Brier issued a notice of mitigated determination of non-significance and then as we all know on September 8, PERK appealed the MDNS. We subsequently at PDI met with the PERK representatives and listened to their concerns and agreed to look into some things for them and that resulted in with other public comment and public agency review comments and some other changes to the plat that were contemplating. So on November 25, 2008 and I know that this doesn't technically agree with what the staff's chronology said, but I made the submittal personally so November 25 is the date of the revised and expanded environment checklist that was submitted to the city. Also at that time a request because a lot of information had been developed as a result of the appeal and other input that was not included in the prior review of the MDNS because nobody could comment on something that hadn't been prepared yet essentially, we decided that it would be best and fair to withdraw... Ask the city to withdraw the MDNS at that time and then reissue it based on some new exhibits. And so that's what we requested on November 25 and subsequently, I think it was on January 29.... Yes it says later the MDNS was formerly withdrawn by the city. There were two other key items that happened at that time as we developed the next and final set of plat revisions and that is that we noted in concert with some negotiations we had been holding with the North Shore school district \*\* of the RCW requirement provide safe walking conditions for children in the plat to the nearest school bus pickup point. We had met on several occasions with representatives of the district and agreed after analysis to provide a paved raised asphalt walkway from the plat entrance at Brier road within existing public right of way along the easterly margin of Brier Road and what is known as Floral Way or 29<sup>th</sup> to the north to meet an existing asphalt sidewalk that comes in contact with the interception of 241<sup>st</sup> Place and Floral Way. And that's where the district after meeting with the transportation division head from the district said that's where they picked the kids up now and that's where they want to continue to pick up the school kids. So that was one thing that we incorporated in to the proposal. We also did a revised traffic analysis and Mr. Long will speak about that at the request of the city. Because there are pedestrian facilities on the west side of Brier Road, but not on the east side of Brier Road is a rather long extension of sidewalks that go north up to city hall practically and beyond, maybe the junior high north of city hall. Asked us to explore the feasibility of a crosswalk at the plat intersection to get folks across the street that wanted to use the pedestrian system along the west side of Brier Road.... And so Mr. Long's company did an analysis. He will speak about that and has been incorporated at

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

the city's request into the proposal. So as I mentioned the MDNS was withdrawn on January 29 and then the notice of mitigation determination of non-significance was reissued on March 16 and then SEPA appeal then was received on April 20<sup>th</sup>. That is sort of the history. That's how we got here. That's the collaborative effort that we went through with staff, environmental review to accommodate a much more favorable plat to this community that's going to fit in well with the surrounding neighborhood. It's going to meet the city's ordinances. It's going to have face clearing and grading, a lot less of it. And that was the result of three years of effort if you will. Three to four years of effort on that front. On the site itself, the north... It's kind of an interesting piece of property because it sits at the hip joint of several jurisdictions. It's Snohomish County to the east unincorporated. City of Brier to the north and the west... And of course the city of Kenmore to the south... Access it as an existing point of crossing of the Abbey View drainage stream at Brier Road and we will be replacing the hung culvert if you will. Old culverts that are existing at that location with a fish friendly arched culvert that Mr. Lauzen or one of the other experts will talk about briefly. One of the things that Brier's subdivision code makes you look at is the ability to provide access to adjoining properties. And of course, all of the properties that I mentioned to the north, east and south have already platted none of which provided road stuffs to this property. So the loop system is a necessity in this instance and adjacent properties have already developed. I notice in the appeal documents that part of the argument and passion of the appellant is that this is one of the few relatively undisturbed sites in the county. And Mr. Galt had you gotten out of your car and walked up through it, it would have been hard to miss hitting either barb wire or old equipment that has been deposited over the site as is evidenced in a Phase 1 environmental analysis that we did and been inventoried there. There are a number of old out buildings that are on the site. A lot of construction debris. All of the buildings that are there, there has been substantial clearing in the past on the site, there's a lot of heavy blackberry throughout the site, there's an old filbert grove that was clearly planted. All of the buildings that are on the site, all the debris will be removed under permit of course appropriately taken from the site and disposed of. Mr. Coglas who is our soil consultant can speak to that in any detail with any questions that anybody has on that. The only structures that will remain are on lot 21, which is the large lot on the west side, northwest side of the first internal road intersection in the plat. I mentioned about the existing zoning is single family residential 12,500 Brier's comprehensive plan is for single family. All of the lots in the plat exceed 12,500. In fact the average is closer to 13,000. The site is served by sanitary/sewer and water by Alderwood (ph. sp.) water district Mr. Galt. We will have an updated and have an updated availability letter from Alderwood (ph. sp.) water and sewer. Just for the record though, the sewer main that we're constructing on the subject property will be owned by the city of Brier. Effluent which passes through it will be Alderwood's (ph. sp.) once it leaves the site.

Hearing Examiner: Do you want to submit that now?

Mr. Egge: Yes please.



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: If you could give one to the clerk. She is the most important one to have it. Miss Swisher enter this as exhibit A4. Which question is this one? Q 30...

Mr. Egge: There were two actually. Q30 and 31 and I believe 32 has been answered as well.

Hearing Examiner: So the sewer will be owned by the city on site... The sewer onsite owned by the city and then the sewer offsite Alderwoods water district.

Mr. Egge: That's correct.

Hearing Examiner: Although actually Alderwoods water and waste water district.

Mr. Egge: Exactly. It's hard to get used to that.

Hearing Examiner: It is hard to get used to it. I am going to put things that come into tonight under the A category. It's easier than running around and trying to tag them with yours or PERK's identifiers. And it help keeps clearer what was pre-field and what's not.

Courtney Kaylor: We are prepared to answer your question about which elements of the project have an HPA issued. Unfortunately tonight I only have one copy of the HPA. So I can bring copies of this. I'm assuming that this is going to go through until tomorrow. We have two copies. Perhaps I can give one to you and one to the clerk tonight and bring copies for the other parties tomorrow.

Hearing Examiner: Is Mr. Egge going to testify about this?

Courtney Kaylor: He is.

Mr. Egge: I think I will probably do my best and probably get corrected in terms of the technical aspects of the permit. But I believe we have one hydrolics permit that covers several activities. And it involves the outfall or the culvert replacement at the entry road. It involves the outfall for the storm drainage at 60<sup>th</sup> or 24<sup>th</sup> and it involves one thing which I can't remember. And the sanitary sewer connection at 24<sup>th</sup>... It encompasses all three of those activities. And it has been issued.

Paula Swisher: Mr. Galt I can go make copies of that for all the parties.

Hearing Examiner: We will then enter a copy of HPA control number 117102-3 as exhibit A5. You may continue.

Mr. Egge: Just a brief statement about compliance with the Brier comprehensive plan. The staff has listed several policies in the staff report which I mentioned earlier, I believe, could fit either the 2000 or the updated 2004

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

comprehensive plan. We are in compliance with those and we have no issue with any of them. We do believe that we meet them. And also that the existing RS12, 500 zone of course does implement that classification of single family in the plan map... As far as Brier subdivision code compliance is concerned chapter 16.16 design criteria improvements and dedications. The staff has described the compliance with each element in its staff report and when I'm done with my quick spiel I would ask if that's the point that you wish us to go through the staff conditions or would you prefer that we wait until later to do that. Normally we would go through those conditions at some point.

Hearing Examiner: And I want you to at some point. My gut thinking, my gut reaction is to think that doing it later might be better than doing it now because I think it's going to get down into technical minutia and I don't mean that negatively. But I think that's what will happen and I think we may lose sight of the bigger picture and the issues in PERK's appeal. Maybe we ought to figure on doing that when you get back on rebuttal.

Mr. Egge: I had that thought myself, but wasn't sure we'd get another shot.

Hearing Examiner: I'll make sure you do. Hold me to that.

Mr. Egge: We'll do.

Hearing Examiner: Actually one of the questions says go through B28 section by section and that's exactly what I'm looking for is people to go through and talk about those conditions. Let's do it later.

Mr. Egge: You had mentioned in your introduction, Mr. Galt, the RCW compliance with the public safety health and welfare portion and I usually give a brief minute or two on each of those elements as they apply to the design. It won't take me very long to do that. I would note under RCW58.17.110 that we have made appropriate provisions first of all for open space. We have about 15% of this site dedicated to permanent open space. We have preserved all of the critical areas in tracts and permanent NGPA status. We have significant tree preservation and replacement much of which will be planted in the open space tract. Under drainage ways, storm water plans have been designed per the latest of the Department of Ecology 2005 for Western Washington. Final design approval is required prior to construction of final plat. We're routing a good amount of drainage from rooftops and footing drains to provide additional flow to buffers and critical areas. Mr. Lauzen will speak to that. I mentioned the undersized culvert that's been passable at the road entrance, that's going to be improved. And if fish could get up there and do get up there and could and might, in certain conditions they will be able to get past that culvert in the future. Any ground water in the vicinity of our deepest excavation at the southeast portion of the site where we're building a detention vault is being incorporated into a bypass situation to allow it to continue to move through the site toward the stream corridor. So that water will not be pulled away from its ultimate source or ultimate location. Under streets and roads, all of the interior roads will be built to city standards. We talked about the offsite

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

walkway for school children and of course a crosswalk which will be designed and constructed at the project entrance to facilitate pedestrian access to the west side of Brier Road and pedestrian facilities there. We have no alleys proposed which is one of the criteria. There are other public ways, which is sort of a non-applicable policy here because we can't connect to any other direction other than Brier Road. Transit stops, none of have been requested. It is a single family development and less likely to use transit than higher density. Potable water supply and sanitary waste so we have submitted updated certificates for potable water and sanitary/sewer from the Alderwoods water and waste water district to you this evening... As far as parks and recreations, provisions as I mentioned nearly two acres or 15% of the site... Permanent passive and active open space along the east margin with a soft surface trail through the passive part and an active play element on top of the covered vault area and lawn area... Playgrounds would be the same response. And Mr. Harvey from Weisman design might testify to that when he's talking about the tree plant. As far as schools and school grounds are concerned, safe walkways are being provided throughout and then the offsite walkway condition where kids are picked up will be provided. So that's my initial comments on the plat design unless you have questions. We have other experts that want to give a minute or two on key issues.

Hearing Examiner: Thank you Mr. Egge. Does PERK have any cross examination questions for Mr. Egge? While they're thinking, let me remind the parties... I say remind... Let me advise the parties because I am not sure that I mentioned this before, in terms of cross examination, I don't care who representing a party cross examines a given witness, but I only want one person representing a party cross examining a particular witness. Miss Kaylor could cross examine Mr. Egge and then the lady beside her could cross examine another witness and someone else representing you could cross examine another witness, but the two of you ladies can't tag team on cross examining one person. That's how I allow cross examination. And for those of you who are members of the public, fear not I do not allow cross examination of lay persons just giving their honest opinion and testifying in a hearing. You've got to be an expert before you get stuck with the cross examination. And we wouldn't have cross examination at all if this weren't an appeal hearing. So there we go.

Paula Swisher: Before PERK starts to talk, if Miss Mooney is going to talk, she is going to need to speak up because while I've been sitting here I've been listening and you're not speaking loud enough to be picked up clearly on the recording.

Hearing Examiner: First of all do you want to cross examine? You have had plenty of time to figure it out.

Miss Bowers: We do have a question. Elizabeth is going to ask the question because it's pertinent to the stream.

Elizabeth Mooney: Are we allowed to use one of our witnesses to cross examine.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: No.

Elizabeth Mooney: On the, I think you mentioned the outfall at 60<sup>th</sup>. In the outfall at 60<sup>th</sup>, could you please tell me or point to precisely where the outfall is.

Mr. Egge: I have to leave that for Mr. Lauzen. I am not privy to that location. He drew the plans for that. He's our project engineer. I would be guessing.

Elizabeth Mooney: Can we defer to his expert when the time comes \*\* 60<sup>th</sup>...

Hearing Examiner: Yes, you can ask. If his expert doesn't answer the question, you can ask it again. Absolutely.

Elizabeth Mooney: I was wondering if you are aware that there are fish at that outfall at 60<sup>th</sup>? Wild fish... Salmonids...

Mr. Egge: Whether I am personally aware? No I'm not.

Elizabeth Mooney: Can I tell you?

Hearing Examiner: No. You can tell me later with your testimony.

Elizabeth Mooney: I just asked Mr. Egge whether he knew that were the fish at the outfall.

Hearing Examiner: And his answer was no he doesn't know.

Mr. Egge: She asked me if I personally knew. I believe it was wild salmonids. No, I don't. I believe some of them \*\* camp that will know that answer...

Hearing Examiner: If I can offer a cross examination hint from a semi-professional myself because I'm not an attorney. I didn't go to attorney school to learn how to cross examine people. But I would suggest to start your questions focusing on the topics that the personally actually talked about. And Mr. Egge didn't talk about specifics like that. So if you start honing in on those specifics, you're probably going to get him saying I don't know, I don't know, I don't know. Somebody else does.

Elizabeth Mooney: He said there was an outfall at 60<sup>th</sup> and I'm talking about...

Hearing Examiner: Do you have more questions for him?

Elizabeth Mooney: I'm wondering if you know whether Ginger Holzer (ph. sp.) who was at the back of this HPA was made aware about the salmonid population on 60<sup>th</sup> Avenue northeast.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Mr. Egge: No I don't think I can.

Hearing Examiner: The literal way that you asked the question had the fish living on 60<sup>th</sup> Avenue.

Elizabeth Mooney: IN the ditch on 60<sup>th</sup>, where you plan to put the outfall, do you know if Ginger Holzer (ph. sp.) was made aware that in that ditch there are wild salmonids?

Mr. Egge: I don't know who would have made her aware of it so I can't respond to that. I didn't make her aware of it.

Elizabeth Mooney: Thank you, that is all.

Hearing Examiner: Thank you. Does the city wish to cross examine the witness?

Mr. Knutson: I have a few questions. Mr. Egge as the applicant's representatives am I correct in understanding that the applicant accepts the conditions that have been set forth in the MDNS?

Mr. Egge: That is correct.

Mr. Knutson: And do I also understand correctly that the applicant accepts the conditions that the staff is recommending in the staff report for the preliminary plat?

Mr. Egge: Generally we have some things we need to tweak, but yes overall in a general sense yes.

Mr. Knutson: Thank you, that's all.

Hearing Examiner: Thank you Mr. Egge. Miss Kaylor who's next.

Courtney Kaylor: Next we call Ken Lauzen.

Hearing Examiner: Please raise your right hand. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Ken Lauzen: I do.

Hearing Examiner: State your name and spell your last please.

Ken Lauzen: Ken Lauzen.

Hearing Examiner: Thank you, your witness Miss Kaylor.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: I'm a registered professional engineer in the state of Washington. I'm a principal and project manager for the Blue Line group. Jim spoke about many of the site layout issues. I'll talk a little more specific about the drainage design as well as the culvert outfall and some of the original control measures. This site is a little bit complicated for drainage. There are two drainage basins. The northern half east drains to the northeast wetlands in the northeast corner which then drains offsite to the east eventually joining the west side of 24<sup>th</sup> Place which becomes 60<sup>th</sup>. The southern portion of the site...

Hearing Examiner: Excuse me. Question from the audience?

Unidentified female: Is the public allowed to see the exhibits as they're being discussed?

Hearing Examiner: You are actually the one that I'm looking at doesn't show a single thing that he's talking about. I'm just looking at a plat map.

Courtney Kaylor: Mr. Examiner, we could have our witnesses testify here and put the exhibits up there.

Hearing Examiner: I'll just tell you right now that the exhibit that's up here right now doesn't relate to what he's talking about... It's the same one that Mr. Egge had up. Now you can sit in the little blue chair for quiet speakers.

Hearing Examiner: I think as a practical matter for the audience, even though this is a full sized plan set, it's going to be hard for you folks who are in the back to see details on these plans if you have not ever looked at them before. But that's the best we can do is turn around and face you.

Ken Lauzen: So as I was saying there are two drainage basins on the site. There's a drainage basin for the northern portion of the site that drains into the wetlands in the northeast corner and then offsite to the east. The rest of the site generally sheet flows to the south and to the east gradually getting into the stream that runs basically parallel to the southern property line. These two drainage basins then combine along 24<sup>th</sup> Place which becomes 60<sup>th</sup> down in King County approximately at northeast 204thPlace which is less than a quarter of a mile downstream. We explored the site for more than a quarter of a mile downstream closer to the half mile downstream. Several different times, at the times that we were there, there were no obvious signs of flooding or erosion. We understand that through the Herrera study that's been referenced and I believe is in exhibit that down in the lower reaches of it which is approximately a mile and a half south of this site there's obviously been a lot of sediment issues in the past. And that report prepared by Herrera consultants in September 2005 cites numerous issues with upstream development contributing to sediment and flooding problems in the stream and couple of things that report states. One instance it says the development and implementation of construction site best management practices should minimize the sediment that is produced as a result of featured development

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

relative to historical construction site erosion. In other words, past development without regulations is what lead to sediment problems the stream's experienced and by implementing BMP's we won't be increasing the sediment problems downstream. It goes on to recommend regional detention ponds that would reduce peak rates for flows entering the stream. They suggest this as a mitigating measure for developments already in place. Since we're proposing a detention wire quality vault that exceeds the requirements of Kenmore for who that report was prepared for and was referenced in the report, our development already exceed expectations of that report. So regarding the sediment, it hasn't been prepared yet. just in the order that we do things, we haven't prepared these documents at the preliminary plat stage, but a storm water pollution prevention plan or swipp as well as a NPDES, national pollutant discharge elimination system permit, those will both prepared, obtained from the Department of Ecology before we prepare for construction along with detailed erosion and sediment control plans that will be prepared and approved by the city of Brier and according to the Department of Ecology standards prior to starting construction. So these measures will prevent sediment laden runoff from leaving the site with things such as sediment ponds, construction rock entrance, silt fence, and so on. The phase construction of the project as well will help eliminate erosion and sediment from leaving the site bearing construction which is obviously a major concern in most developments. I think that's what led to a lot of the issues in the past that the Herrera report quotes. Regarding the drainage, the city of Brier has adopted the 2005 Department of Ecology storm water management manual for Western Washington. It's one of the most current storm water drainage manuals around as is basically the best available science for managing detention and water quality. All jurisdictions in Washington are required to adopt this manual or an equivalent by February of 2010 so it is the standard out there that other jurisdictions need to adhere to and updating their standards to match this. That's Brier's standard. Unincorporated Snohomish County directly to the east, they're still using a modified version of the 92 Department of Ecology manual. Kenmore to the south uses 1998 King County surface water design manual. Lake Forest Park which is southwest of us uses the 2005 King County surface water design manual. All those are substandard to the 2005 Department of Ecology manual and are needing to be updated. For the site, one did thing we did look at and write a codicil, our geo-technical engineer will speak to this a little more. Their till soils, so infiltration was not an option. So we are collecting the runoff and taking it to a detention water quality vault in the southeast corner and then from there to the easements to the east where it will be discharged along the Westside of 24<sup>th</sup>, 60<sup>th</sup>. A couple of smaller drainage details, there is an upstream basin tributary to the site which is essentially runoff from existing properties there. It's not a very large basin. We're proposing an interceptor trench along the north side of the property that will be collect, conveyed by level and discharged by level spreader to the wetlands in the northeast corner. We are also doing a level spreader for lot 1 in the southwest corner, which will be. Lot 1 will go to the wetland there for wetland recharge. Lots 4 through 6 will be the roof drains and driveway drainage will go to the street and then to the vault. But the footing drains and rear yards will sheet flow to the stream to the south. And lots 10 and 11, which are up in the northeast corner around those wetlands, their roof, footing drains and yards will all go to the wetlands for

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

wetland recharge. And we did calculations for those to try and match the existing peak flows that went to those areas. Jim discussed briefly the culvert crossing at the entrance to the site. There is currently a gravel driveway that extends east from Brier Road into the site. There are currently two 24 inch diameter culverts there that are stacked up on top of one another. They're about 50 feet long and they convey the stream under this driveway or the Abbey View drainage under the driveway. Once developed, the driveway will be replaced with a wider street section that meets city codes. And it will have a 50 foot right of way with 32 feet of pavement, planner strips on sidewalk and sidewalks on each side. The existing 24 inch culverts will be replaced with an 89 foot long arched culvert that is going to be 73 inches wide by 55 inches high. It will be countersunk 32 to 35% and filled with gravel. And this done for fish passage to meet the Department of Fish & Wildlife recommendations for fish passable culverts... I mentioned the HPA and I believe without going into too much detail. I can go into that later.

Hearing Examiner: I missed back in the list of adjacent jurisdiction codes; you said Snohomish County uses something akin to what?

Ken Lauzen: It's the 1992 Department of Ecology manual, but it's a modified version. They have their own.

Courtney Kaylor: Mr. Lauzen, following up on that there are couple more specific list of questions in your list of questions. How do the 2005 DOE manual low control requirements compare to the 1998 King County manual level 2 flow control?

Ken Lauzen: The 2005 Department of Ecology manual it requires for you to assume that everything is forested conditions for pre-developed. And that's a much more conservative way of doing it. In the 1998 King County surface water design manual, you could take your existing developed areas and \*\* it's not as effective...

Courtney Kaylor: Does Kenmore require LID techniques?

Ken Lauzen: No.

Courtney Kaylor: Can you identify for us the location of the outfall?

Ken Lauzen: The outfall, I can go to sheet 5 the preliminary plat drawings. The storm water outfall will be essentially in the southeast corner of existing lot 16. I guess actually in the right of way of 24<sup>th</sup> Place west just east of lot 16.

Hearing Examiner: And the lot 16 that you're talking about is the same one Mr. Egge talked to. Not Lot 16 in the plat, but that lot 16 in the adjoining...

Ken Lauzen: Correct. That's the one that is already connected to the existing sewer right there.



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Courtney Kaylor: Can you discuss that design of that outfall?

Ken Lauzen: Yes, this is preliminary plat stage. A lot of the detail design has not been worked out. It will be completed during final engineering, but we have discussed this with Snohomish County because we have a grading permit pending because that's their jurisdiction there as well as obtaining the HPA from the Department of Fish & Wildlife, which saw the design. We did a little bit more detail design for that portion of it and it was submitted to Ginger Holzer (ph. sp.) and approved by her. It will be a rip rap pad outfall that then connects into the ditch there.

Courtney Kaylor: Thank you.

Hearing Examiner: Does PERK wish to cross examine?

Miss Bowers: Yes, we do have a couple of questions. Number one is the storm water vault and the related infrastructure that you counted on is that part of your total stated open space?

Ken Lauzen: Yes, I believe it is. The area above the vault will be part of the park.

Miss Bowers: Is your firm actually involved with the designing of that park?

Ken Lauzen: The park itself, no.

Miss Bowers: Can you for the record please specify which wetlands which lots are draining to since there are three wetlands

Ken Lauzen: A and B are in the northeast corner. And lots 10 and 11 will go to those as well the upstream drainage that comes on our site that we're collecting.

Miss Bowers: You mentioned that lot 1 and lots 4, 5 and 6 were draining...

Ken Lauzen: Lot 1 goes into the wetland there. I believe that would be wetland C. And lots 4, 5, 6 are directly to the stream.

Hearing Examiner: Do you mind if I ask a clarifying question? When you say, and it's about which lots are going where. When you say that lot 1 is draining to wetland C, do you mean all runoff associated with lot 1?

Ken Lauzen: No.

Hearing Examiner: What do you mean?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: If I wasn't clear on that, I tried to explain that. For instance, on lot 1...

Hearing Examiner: This information is in the drainage plan.

Ken Lauzen: It is. Essentially the

Hearing Examiner: I am trying to make it clear for the benefit of the audience. Let me ask it this way. Downspouts go where?

Ken Lauzen: It's slightly different for a couple of them. All the driveways go to the street because those are pollution generation impervious surfaces. So for the most part, it's roof and footing drains and yard drains that go to them and level spread by level spreader into it. But the driveways do not.

Hearing Examiner: But the PGIF's don't.

Ken Lauzen: Correct. The driveways will go back towards the street so the drainage will get collected and treated in the vault. There's one exception. I'm drawing a blank on it right now. But as far as the roof and footing and yard drains, the downspouts are collected and brought back to the stream or wetlands and dispersed by a level spreader.

Miss Bowers: Where is that level spreader going to be?

Ken Lauzen: They're shown on our plans. But there's one for lot 11, there's one for lot 10. 4, 5, and 6 each have their own. And lot 1 has its own.

Miss Bowers: So a total of 7.

Ken Lauzen: 6. I'm sorry there is 7 is because the offsite area that we're collecting comes in and has a... It's actually a rip rap pad going to wetland A.

Miss Bowers: Were the projects that you referred to as having problems with runoff and sediment also permitted including receiving NDS permits and city and county approvals? When you were speaking, you referred to several other projects that were having problems.

Ken Lauzen: In the Herrera report? I don't the details of that report. I was generally citing that what report was discussing was past development that was done before many of the regulations are in place now. Most likely, the report says, were not subject to the same controls, best management practices, and such that we are now. so development in the past where drainage control wasn't required, water quality control, erosion control before those were required that's what probably led to the sedimentation build up in downstream of this site.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: Will the peak flows in stream 0056 increase as a result of this?

Ken Lauzen: No, they should not. The Department of Ecology manual, we have to match... The durations will not. That's what the 2005 Department of Ecology manual sizes things to. You have to match half of the two year and up to the 50 year storm and then typically though the sizing criteria in the 2005 DOE manual does not do peaks. But typically if you match duration, you match peaks. That's a pretty technical...

Miss Bowers: Given that there are numerous 100 year floods and 100 year events happening frequently, how are you going to compensate those that are \*\*...

Ken Lauzen: That gets into the criteria of what the 2005 Department of Ecology manual outlines it. The way they have you size it is for that and that's what the city of Brier has adopted. So we're sizing everything based on that.

Miss Bowers: Are you aware of any of the projects which caused significant runoff and flooding and sedimentation problems that proceeded without permits? Like Lake Forest plat or \*\* projects that were to the south... You said you went past the quarter mile, so I'm sure you were aware of...

Ken Lauzen: Along this drainage basis, I don't.

Miss Bowers: Okay. What additional percentage of cubic foot per minute inflow to the system might cause additional flooding and sedimentation undercutting the stream banks since that is one of the big pieces of the Herrera Report is the erosion that's occurring?

Hearing Examiner: Could you restate that? The question kept sort of going on a little bit there. It's usually considered cubic feet per second isn't it?

Ken Lauzen: Yes.

Miss Bowers: What percentage of additional...

Hearing Examiner: I think the question that you're asking is something different than one that talks about percentage of additional.

Miss Bowers: I think in essence what we're trying to accomplish here is what are you going to do within your structure to avoid additional erosion to 0056 in \*\*...? Because you will be dumping a lot of water into that stage...

Ken Lauzen: We will be detaining it and releasing it slowly by the control of the detention vault. The control structure, the detention vault it won't simply be all dumping... Again I'm not sure the question or the answer.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: Will the flows when you are emptying the storm water vault, will those flows be strong enough to harm the existing fish that are in 0056?

Courtney Kaylor: I'm going to object. This goes beyond the scope of his direct testimony? He didn't testify about impacts to fish. That's another witness.

Hearing Examiner: Sustained. Ask it later when the fish person comes up.

Miss Bowers: What additional percentage of sediment would burden harm the salmonid stream? What's the additional sediment that's going to harm the salmonids in the stream at its mouth?

Courtney Kaylor: Again objection. This witness didn't testify about impacts to fish.

Hearing Examiner: Sustained.

Miss Bowers: There's has been significant damage and flooding episodes at the Harbor Village condos at the mouth of the stream. Many of those floods are directly related to an increase in sediment from developments up north. How are you going to manage the amount of sediment that's coming off of this given that this particular development is considerably larger?

Hearing Examiner: Larger than what?

Miss Bowers: The other ones have been 12 to 13 homes. This one is going to be double all those. And their sediment issues have caused...

Ken Lauzen: Besides the Herrera study, I honestly know nothing about the outfall down a mile and a half away from our site. So in reading in that report, it discusses many instances of how development in the past has lead to increased sediment down there. In the past, there's a lot of things that you can develop that are exempt or it was before they had standards. I think it stated in 1978, which is about when they started adopting drainage regulations, 78% of the basin was developed. Rob is that the right number? So that means most of the... ¾ of the area was already developed before there was any regulations. The Herrera study goes on to state that in recent years, the sedimentation has decreased. It's still getting there, but the increase of it, it's not increasing all the time. It's, I think general thought process on this is that developments that were exempt or private regulations weren't controlling it. When you're doing the things I mentioned about erosion control, when you're getting the permits you need, you're doing the studies that you need in terms of preparing erosion control plans. Those prevent or reduce or hopefully eliminate sediment from leaving the site so you won't be increasing the sediment down at the base of the stream.

Miss Bowers: I think that's it. We can call him later if we need to.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Yes, probably. We'll see.

Courtney Kaylor: Mr. Lauzen was not our witness list.

Hearing Examiner: We'll worry about that later. Does the city wish to cross examine?

Mr. Knutson: Yes. Mr. Lauzen as I understand it, you're testimony is that the storm drainage plan for this project complies with the city of Brier requirements and the 2005 Department of Ecology storm water manual. Is that correct?

Ken Lauzen: Yes.

Mr. Knutson: And is it also correct that the storm water drainage plan includes both low impact development techniques as well as more conventional detention approaches?

Ken Lauzen: The low impact development techniques that are employed here would include the very large lots, the phase clearing and grading so that the whole site is not going to be masqueraded. And then infiltration... The lack of available infiltration prevents many of the things that are now considered low impact development techniques such as pervious pavements and other items. So to the extent possible, some low impact development techniques were added in as well as the conventional methods.

Mr. Knutson: In your opinion were there other low impact development techniques that would have improved the regulation or the control of storm water for this project?

Ken Lauzen: We did not look into that in great detail. So I don't know if there were other items that were... That could help that... A lot of times, the low impact development techniques are a newer item. A lot of jurisdictions don't even allow them. They're more of a trial item. With lack of infiltration prevents a lot of them from being possible.

Mr. Knutson: In your opinion, the combination of low impact development techniques and the storm water detention facilities that are complying with the Brier and DOE manual requirements do effectively regulate storm water drainage from this project?

Ken Lauzen: I believe they do, yes.

Mr. Knutson: Could you tell me where the dispersion trenches are with regard to the critical area buffers.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: I believe they are all pretty much right on the edge of the buffers or if they're not on the edge of the buffers, they're on the outer I think 75% of the buffers. No further questions.

Hearing Examiner: I've got a couple I like to ask. The 2005 DOE manual, does it require LID techniques?

Ken Lauzen: No.

Hearing Examiner: Does it describe LID technique and allow them? Or is that something that's coming into the vernacular subsequent to when that manual was prepared is what I'm trying to get at?

Ken Lauzen: They're definitely not required. I think they are encouraged in a lot of places. I don't know specifically... I know they're not required in there. I don't know specifically what the 2005 manual says as far as encouraging them. I think that items such as the phase clearing, the large lots, these are 1/3 of an acre lots which is much greater than what a lot of... These are going to have a lot of pervious area on every lot, reduce pavements and such. I think some of those would qualify and certainly be the type of thing that is encouraged by anything that requires low impact development techniques.

Hearing Examiner: One other question or line of questioning... Going back to what you said about peak flows and durations of flows in the context of discharge from the site. Will there be a greater absolute volume of storm water leaving the site after development than leaves the site today in its current state?

Ken Lauzen: No. Isn't the amount of storm water that comes in the same as the amount that would eventually leave?

Hearing Examiner: No because today the site is significantly covered with trees which will absorb, transpire, some of that water and the ground cover is going to change, the tree cover is going to change. Isn't the system balance going to change?

Ken Lauzen: Whenever you're altering it, it is going to change in some manner. We are using, the best available science to match thus the reason that we're doing several different things.

Hearing Examiner: I am trying to understand. I always thought that storm drainage control devices were employed because either the volume or the rate of discharge after development was going to be greater than before and the systems were intended to try and control that.

Ken Lauzen: They are going to be faster than before. Yes, there is that some of the water will get absorbed, but it still will during development. The whole point of the

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

storm water system is to prevent the rate and duration leaving the site has matched the existing as best you can.

Hearing Examiner: How can both rate and duration stay the same? If we didn't put any control in, wouldn't the peak flow be greater than in an undeveloped state?

Ken Lauzen: Absolutely.

Hearing Examiner: So if we're going to put control like detention that's going to lop the top of that peak curve off and store it in the vault. Now it has to get rid of it. So wouldn't that increase?

Ken Lauzen: There are different orifices that you put in your control structure and they release it gradually. There's different ways of doing it. Let me give you another example.

Hearing Examiner: It just seemed to me like if we're cutting the peak off, the durations got to be longer doesn't it? This stuff's got to go somewhere. Granted some of it is going to be dead storage in the bottom of the vault, but that's neither here nor there. If you lop the top of that curve off, everything that was under that curve has to go somewhere. Doesn't it push the duration of the flow further out? Doesn't the flow curve change and get pushed out?

Ken Lauzen: Yes it does.

Hearing Examiner: If it does than how can you say to me that and to these folks that the system is going to keep the peak and the duration the same after as before?

Ken Lauzen: Okay, maybe I misspoke by saying that. But what I did say is in the 2005 DOE manual, you're matching durations. You're not matching peaks.

Hearing Examiner: So it lets the peaks go. I'm really not trying to confuse you. I'm trying to unconfused myself.

Ken Lauzen: I'm getting mixed up here. Say the King County manual, you do level 1, level 2, level 3. Level 1 you match peaks. Level 2 you match peaks and durations. And without getting... Maybe I don't have the technical background to explain how that exactly works. But using the programs, and maybe Rob maybe you'd be able to speak to that more.

Hearing Examiner: Level 2 matches peaks and durations.

Ken Lauzen: Correct.

Hearing Examiner: And the 2005...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: Department of Ecology matches durations, but it also assumes a forested condition which makes it a much more conservative manual.

Hearing Examiner: When you say but assumes forested, you mean it makes you assume that the current condition of the site is forested regardless of what in the heck the site looks like.

Ken Lauzen: Exactly.

Hearing Examiner: It could be a cow pasture. It could be a horse arena. It could be bare packed dirt that 50,000 cows have been on and you still have to pretend that it's a forest?

Ken Lauzen: Yes.

Hearing Examiner: So you're going to have to have what? Greater storage or less storage...?

Ken Lauzen: Greater storage.

Hearing Examiner: I have a third question I want to ask you. You probably don't have handy in front of you a copy of PERK's exhibits. Do you have them tabbed so that you can find particular numbers? P30 please... I am going to ask a question that I think the ladies were trying to get at, but I'm just going to ask it more bluntly. This is one of the sites that is not in Brier. I believe this one is in Lake Forest Park. Miss Bowers says I'm right with that. It's on the Westside of 55<sup>th</sup> and it is discharging into this water course that we're calling 0056.

Ken Lauzen: Correct.

Hearing Examiner: One has to presume when one looks at this picture that something's going wrong. I don't think... We haven't had testimony about this picture yet, but that doesn't look like it's supposed to be working. I think what these ladies were trying to ask when you they were asking you some of the questions is, how do we know that your development isn't going to end up in a mess like this one? What can you tell me or tell them to give me confidence that I'm not approving a project... I don't think I approved Trillium. I think I approved the one south of Trillium.

Miss Bowers: West Brook who had a similar experience with their water.

Hearing Examiner: Well all I can do is approve them and impose the conditions. It doesn't get implemented that's beyond my control. It doesn't make me feel good, but that's beyond my control. What can you tell me about what you're going to do that's going to give me and them comfort that this isn't going to be an interim result?



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: Well, there's no erosion control measures in place here. You don't see anything in terms of silt fence. There's some straw bales over there to the side, but they don't look like they're doing anything. In addition, I do know a little bit about this project. It's hard to tell at the bottom of this what this area is down here.

Miss Bowers: That's a \*\* straw and it's along 55<sup>th</sup> Avenue.

Ken Lauzen: I do know that this area of this site is a created wetland. So it was probably used as a sediment pond, sediment trap during construction. And ideally what they would've done is something in this fashion where they're... I can't tell what's happening at the bottom. It does not look like what they should've been doing, but what they would've been doing is trapping the water here and letting the settlement settle out before it releases the site. Because when you are doing construction, there is rain sometimes and you have to do something with it. There do not appear to be any erosion control measures in place here and I don't know... I can't speak to what happened with this project, but it could have been the contractor not doing it. It could have been Lake Forest Park not monitoring it or the Department of Ecology or anything. So what we do is we get erosion control plans approved by Department of Ecology and the city and hopefully prevent anything like this from happening. I can't really speak to what happened specifically at this project though.

Hearing Examiner: Sure. Thank you Mr. Lauzen. Redirect.

Ken Lauzen: May I clarify one other thing on this. I think there was a comment earlier about whether I was involved in or knew about any project directly in this basin. I was involved in the project directly south of here, but not during the construction issues that they just mentioned. I wasn't trying to avoid that. It's a different... I think it does eventually tie into the same stream.

Miss Bowers: It does. There are four developments that go into 0056.

Hearing Examiner: Redirect.

Courtney Kaylor: Mr. Lauzen you testified that this project meets the 2005 Department of Ecology manual for storm water.

Ken Lauzen: Correct.

Courtney Kaylor: That manual requires that you assume a forested condition on this site. So would that be in an assumption that would result in a conservative storm water design for this particular site?

Ken Lauzen: Correct.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Courtney Kaylor: So that assumption than would lead to more storm detention than would necessarily be required on this.

Ken Lauzen: Correct.

Courtney Kaylor: Under the manual, is the rate of flow released from your storm water detention facility controlled?

Ken Lauzen: Yes.

Courtney Kaylor: How is it controlled?

Ken Lauzen: Within the detention vault there would be a control structure that has several different orifices or orify (ph. sp.) that are designed at certain elevations, certain diameters for releasing rates according to the modeling program.

Courtney Kaylor: So is the storm water facility designed to release at modeled predevelopment rates?

Ken Lauzen: Yes.

Courtney Kaylor: Those are the only questions I have. One follow up question. And so in your professional opinion, is implementation of the 2005 storm water manual efficient to ensure that they'll be no significant adverse storm water impacts associated with this project?

Ken Lauzen: I believe so. It's definitely the most conservative manual of the ones... Even of the four jurisdictions surrounding us...

Hearing Examiner: Cross examination on the redirect.

Miss Bowers: Yes, given the direction that these conversations have gone, I have three question that \*\*... Number one, you were speaking about LID methods. And you were talking about lots that are all near the wetlands. What kind of LID techniques are you considering for the majority of the other which are on a different type of soil and can a number of different techniques can be used?

Ken Lauzen: What do you mean by different type of soil?

Miss Bowers: They're higher elevation. They're dryer. They're not part of the wetland areas. If you look to the middle, the houses in the middle and up on the north edge, those things are not as wet... The water table is not as high there.

Hearing Examiner: How do you know that? You're testifying now. Are you making a presumption or do you have knowledge about this?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: Okay then let me rephrase.

Hearing Examiner: The evidence that you folks have all submitted collectively if I'm remember correctly indicates that at best there are two soil types on the site and they're both basically the same thing and that is weathered till on top of hardpan. There's no evidence that there's a huge difference in soil types anywhere across this property. So maybe you know something that you're going to share with us later.

Miss Bowers: I hope so. But my question is, on those other lots you didn't mention any low impact development methods. Are you considering anything on those?

Hearing Examiner: That's a good question. That's not getting us into presumptions and stuff. That's a good way to ask it.

Ken Lauzen: The items that I mentioned that are the low impact development techniques being applied here, apply to all the lots. They're large lots. We've tried to minimize the impervious areas. And it's a phase grading of the entire site.

Miss Bowers: But no additional techniques included?

Ken Lauzen: No additional techniques were proposed or required.

Miss Bowers: Given heavy rain events, how did you calculate the rate by which the storm water will be released?

Ken Lauzen: There is a modeling program in the Department of...

Hearing Examiner: Let him answer the question before you jump with the follow up because I don't think you've finished. You said there's a modeling program in the...

Ken Lauzen: The 2005 DOE manual called the Western Washington hydrology method, WWHM. And it's a program that's there is accepted throughout. It's part of the manual and you use that to size it.

Miss Bowers: Okay. Is that taking 50 year events? Is it taking 25 year events? What number are they basing it on? What kind of heavy rain?

Ken Lauzen: All of the above, historical conditions, historical rain flows. And that's outlined in our drainage report.

Miss Bowers: Given the number of trees currently on this piece of property which are over 800, and given that you all are planning on removing approximately 670, how are you...

**People for an Environmentally Responsibility Kenmore (PERK)**  
**Appeal of Brier's Sunbrook Project**  
**Day One – July 30, 2009**

Courtney Kaylor: I am going to object. Those are assumed as facts not in evidence.

Miss Bowers: Aren't those on your tree replacement...

Hearing Examiner: Hang on a minute. I'm thinking. Us New Englanders think slow sometimes. And we try to think carefully when we're sitting where I'm sitting. There are facts in evidence about trees. There are facts in evidence about trees that I'm sure that I can reconcile. One of the facts in evidence that I'm sure I can reconcile would be anything to prove the 600 number that she says that are going to be removed. I am going to sustain the objection only in so far as you're speaking about some specific number of trees to be removed that I'm not sure is clearly represented in the record. There is evidence in the record about trees that will be removed; however to that extent I would overturn the objection.

Miss Bowers: Okay then I'll reword it. Given that probably potentially two-thirds of the trees will be removed, many of whom are species...

Courtney Kaylor: I am not trying to be overly technical. My objection is just based on the fact that number is not accurate. And so I renew my objection.

Hearing Examiner: Why don't we try saying that a significant number of trees... We can come up with something here that will get us by.

Miss Bowers: Since a significant number of trees will be removed from this property and several of the species are known to be heavy water consumers in the root systems, i.e. Cottonwoods...

Courtney Kaylor: Again I am going to object because this is testimony.

Hearing Examiner: That is testimony. Objection sustained.

Miss Bowers: I guess I was using the Brier plat maps that were submitted as an exhibit and they have a listing of all the trees on one the maps and they have the species written on. And I didn't think I needed to...

Hearing Examiner: I think what she's objecting to is you're testimony that Cottonwoods are known to absorb huge quantities of water. The drift of your question is that because they're going to take a lot of trees off, what's going to happen to the water?

Miss Bowers: How did you come up with the calculations because most of this water is underground at this stage? So how did you figure the calculations to be comparable to the impervious surfaces that you all will be introducing?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: I used \*\* size the existing areas versus the developed areas factoring what's going to be impervious amount of roads, amount percentage of your lots, and so. You factor that into the equations. And along the lines of being conservative with these numbers with these being large lots, the numbers used for impervious are actually quite large which would build in some more conservatism into the numbers.

Miss Bowers: I think that's all at this point.

Hearing Examiner: Does the city have any further cross of this witness?

Mr. Knutson: No.

Hearing Examiner: Thank you Mr. Lauzen. Who's next?

Courtney Kaylor: Next we call Dan Harvey.

Hearing Examiner: Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Dan Harvey: Yes I do. My name is Dan Harvey.

Hearing Examiner: Thank you Mr. Harvey and I think that volume is probably going to be fine. Your witness.

Courtney Kaylor: Mr. Harvey can you please summarize your education and experience?

Dan Harvey: I'm a registered landscape architect in the state of Washington. I have a Bachelor's from Ohio State University in landscape architecture.

Courtney Kaylor: Can you describe the work that you did on this project in order to aid you in that, I am going to provide you with the large boards of the landscape plan.

Dan Harvey: My particular experience on this project has been in recent months. Working on the final tabulations and organization of the tree plan going into it in great detail, my firm and I have had some involvement with over the design process of \*\*...

Courtney Kaylor: And can you please describe for us existing conditions on the site with regard to trees in particular?

Dan Harvey: There are several numbers that are bounced about whether it's in the arborist report or in the survey or in our plans, but what we count is 791 trees within the property that are counted within on the arborist report. And I could go into detail

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

about some of the differences. There are minor differences in the numbers, but at this point, it's...

Hearing Examiner: More than minor if I can interject...

Dan Harvey: What numbers do you have? As far as the overall number?

Hearing Examiner: Yes, we have 792 in one exhibit and 826 on another one. And there are two different arborist or aboro-cultural (ph. sp.) consulting firms got into this and one of them has 790 trees that they counted. And other one has 826 that they counted. I don't think it's 791, but you're telling me it's 791 now. I'm looking to have this clarified and simplified and not made worse.

Courtney Kaylor: The arborist report is city's exhibit 16.

Hearing Examiner: I think they're two of them in here aren't there? The Newman report which is B16 says there are 792 significant trees. And B18 which is what you've got up here. Pages 2 and 3 says there are 826 trees if I can read the numbers right. My copy is real small, but I think the number said 826. So your witness' plan says 826 and he says 791 in testimony. He's going to have to explain that. B18, pages 2... It's not that exhibit. I'm sorry. That's another one that's in here. It's this. And the last number tree is 826. And it looked to me like they started at 1 and went all the way through, but I got to admit, I didn't count every number to see if they skipped any.

Dan Harvey: 826 is what the survey had on it. There were 37 trees that were actually off of our site that were counted on that survey as on our site. So that puts us down to...

Hearing Examiner: 37 were offsite. I heard you correct, 37?

Dan Harvey: That's correct.

Hearing Examiner: That takes us down to...

Dan Harvey: 789. But that's been my task recently to try and figure out... So the arborist report and our plan get 791 so that's two trees that we're actually showing based on the arborist report. So...

Hearing Examiner: Okay. And the arborist report is B16, is that right?

Courtney Kaylor: The arborist report is B16.

Hearing Examiner: That's the Newman report and I thought he said there are if you look at his tally sheet, he has 816 plus a 749A. I guess he's got 817. But someplace in this report, he says there are 792. Look on page 2 for example. Tree inventory

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

summary, he says 792. Now frankly, I know at this point that we're only arguing about one tree, but I really want to do know what to look at and what to rely on.

Courtney Kaylor: Mr. Examiner, you're asking about the discrepancy between the number on page 2 of exhibit 16 and his testimony.

Hearing Examiner: His testimony is that it's 791.

Courtney Kaylor: But the discrepancy between 18 and 16 has been addressed.

Hearing Examiner: Except that when I subtract the 37 from the 826 that's on B18, by the witness's math, we get 789. I am trusting him on that. And the Newman report says 792. And then his testimony was 791 that there were two extra trees, which he hasn't told me where they flew in from. But...

Courtney Kaylor: I'll let him try to answer your question if he can at this point then we will investigate this evening and we will have an accounting for you of that missing or additional tree tomorrow.

Hearing Examiner: Because my question 39 is just so... Maybe it's good to explain what question 39 is seeking before we get this witness and others into this. I frankly have gotten myself very confused trying to understand how many trees in various places are to be removed at various times in the development of the site. And there's an allegation from the appellants that 100 and some trees are being hidden and all this stuff. What I'm hoping to hear is a real nice, simple explanation without discrepancies that will make this crystal clear to me.

Courtney Kaylor: And that is what we're hoping to give you. Mr. Harvey can you please explain the tree numbers?

Dan Harvey: I'll try to take a minute here and assist in figuring out what is going on with this tree plan. Obviously at first glance what you can see that there are six colored categories. Do you have a copy of this with color on it in front of you?

Hearing Examiner: I do. It's B17 and you're looking at sheet 3. At least the way I have it B17.

Dan Harvey: It's down in the bottom right hand corner. It's L1.2.

Hearing Examiner: Yes, I have it.

Courtney Kaylor: Mr. Examiner I have 11x17 size copies of that here if that would be helpful. I know that the 8 ½ x 11's did not turn out very readable.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: That would be wonderful, yes. The numbers were really teeny. B17.

Dan Harvey: So overall even broader categories than the six colored categories are significant or non-significant trees as they're defined by the city. By the tree ordinance... So non-significant tree is defined as those that are less than 8 inches in diameter or caliper and species such as black locust, cottonwood, alder, and poplar... So those are non-significant trees. And significant trees are those of sufficient size and species other than the ones I already listed that are non-significant. Going into the list of the colored tree categories here... First draw your attention to those that are dark green, that are yellow and that are light green. Those are trees to remain during the plat development. So if you look at the yellow and the green on the plan, those are the ones that are remaining on the plat development.

Hearing Examiner: Those are non-significant trees to be retained, significant trees to be retained and significant trees possible to be retained.

Dan Harvey: The 15 dark green trees are significant trees that are to remain. Simple... Next there are 87 yellow trees which are the significant trees that are possible to be retained. And the 179 light green trees that are the non-significant trees. These are possible to be retained meaning that they'll only be removed if permitted by the city in connection with future building permits within the plats.

Courtney Kaylor: Mr. Harvey, can I jump in and maybe get you to repeat what you just said. The tree removal on this project is phased, correct?

Dan Harvey: Yes.

Courtney Kaylor: And the first phase of tree removal involves development of the plat which would be roads and utility infrastructure, correct?

Dan Harvey: Correct.

Courtney Kaylor: And in that first phase, what you are telling us is that the light green trees, the dark green trees and the yellow trees will remain. And only the red and blue trees will be removed during that phase.

Dan Harvey: And the white.

Courtney Kaylor: And the white, yes. Proceed.

Dan Harvey: Moving to trees that are to be removed, generally these are the blue trees, the red trees and the white trees. So the blue, red and the white are to be removed. The blue trees are listed as significant trees, but are unsuitable for retention



**People for an Environmentally Responsibility Kenmore (PERK)**  
**Appeal of Brier's Sunbrook Project**  
**Day One – July 30, 2009**

because they're dead, they're diseased, they're hazardous. And that's based on the arborist report.

Courtney Kaylor: I am going to interrupt you briefly. There was some question in the appellants prehearing statement about whether some of those blue trees were identified by the arborist as unsuitable for retention simply because they were in the way of residential development. And can you confirm that that is in fact not the case, that those were identified as unsuitable for retention because of their own physical characteristics principally being dead most of them?

Dan Harvey: Yes. To the best of my knowledge that's true. So we talked about the blue trees. The red trees are... There's 111 red trees on the plan and these are the significant trees that are to be removed. And 106 of these trees are exempt from the retention requirements and that's according to the tree ordinance. They're exempt from having to be retained as they're in the building envelopes; they're within 15 of driveways for reasons such as sightlines. They're in the roads or the sidewalks or utility locations. So only 5 of the red trees are significant trees that were not otherwise exempt... That one can be a little bit confusing. So the other group of trees that would be removed are the white trees. There are 383 of the white trees which are non-significant trees to be removed. I'll make a note for that. The red trees are those that are significant trees that require replacement trees by the city. So replacement trees are required at a 3:1 ratio according to the tree ordinance. So that would 333 required replacement trees. As I mentioned before, the blue trees are exempt from those requirements because they're hazardous. They're dead. So we are only talking about the red trees for replacement. At this preliminary stage of the design we are showing 121 street trees as far as proposed replacement trees. 121 trees that are within the street-scape or within parks and open space and these replacement trees are a species native or adaptive to our region \*\* use in their proposed locations whether it's in the planting strips along the streets or in the buffer in open space area. So you might have counted there that there's 333 replacements trees required. We're showing 121 that means are 212 remaining replacement trees that we aren't currently showing on the plans. We would make every effort to place those trees on the site within the open space areas outside of the lots. But to the extent that this is not possible, that the tree possible allows offsite replacement in city owned park land or open space or also pavement into a tree fund for replacement trees.

Courtney Kaylor: When will the final landscape plan showing all the replacement trees be prepared?

Ken Lauzen: The final tree replacement plans, so the tabulation for all the rest of the replacement trees would go in with the final plats with \*\* and be reviewed as part of the permitting process with the city.

Courtney Kaylor: So that's a condition of approval that the applicant has agreed to.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: Yes and it's also listed on the plans, how we plan to deal with all the replacement trees even if they're not shown on the plan currently.

Courtney Kaylor: That plan gets reviewed and approved ultimately by the city.

Ken Lauzen: Yes.

Courtney Kaylor: Going back to the yellow trees. Those are designated to remain. When will they be determined they remain and what's the process for that.

Ken Lauzen: The builder of those lots will have to go through a building permit process for those lots. And if those trees are removed during that permitting process, the city would be presiding over that. They would have to have replacements within the lots for any significant trees, those that are yellow, that are removed in the future that are within the lots themselves.

Courtney Kaylor: What is the replacement ratio for those replacement trees if any of them are removed?

Ken Lauzen: That would also be the 3:1 replacement.

Courtney Kaylor: For any yellow tree that is removed, three additional trees would be planted on that lot.

Ken Lauzen: That's correct.

Courtney Kaylor: The yellow trees, I notice that there are some red trees that are located within lots, are the yellow trees that are shown ones that are in your view... The red trees on lots, how did you determine what's going to be a red tree that's on a lot and what's going to be a yellow tree on a lot?

Ken Lauzen: Red trees on lots are within any... They might be within the driveway site distance, so it's 15 feet within driveways or proposed driveway locations or within building envelopes or it was obvious that those were within the center of the lot where the house might be built. So I think that covers what those...

Courtney Kaylor: And the yellow trees are outside of those locations.

Ken Lauzen: Yes. I guess if there was any grading, significant grading that was going to occur there, couldn't be saved.

Courtney Kaylor: Based on this pre-replacement plan and your testimony are the requirements of the city tree ordinance being met?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Ken Lauzen: Yes. We have been actually working very closely... Do as much as we can to save as many trees at this point as possible, so yes we are meeting. And what the city has required for the tree ordinance.

Courtney Kaylor: Thank you.

Hearing Examiner: Cross examination by the appellant.

Elizabeth Mooney: I do have a concern. Some of our major witnesses are only here Thursday night. And this is taking a while and we will not be able to have them. It includes wetland expert, a member of the Maple Brook community who will be receiving potential slide. I think it would be nice to have some potential opportunity for that to come out while the trees and the storm water people are here because between lots 4 and 5 asking some questions while the Maple Brook representative is here about potential slide into the stream. The fourth wetland person, I believe, is here. I am just concerned that our arguments are going to be lost if we continue down this road. Not to mention the people who are to speak on behalf of their homes at 190 5<sup>th</sup> Avenue in Kenmore that are eroded. That's another \*\*... I haven't looked behind me, but I know some people are here from unincorporated Snohomish County on the east side in the northeast and their impact should be heard. And I think that most of those people work tomorrow. So for you utilize and know whether or not there might be a significant adverse environmental impact... Today we have the community here and tomorrow I think we are going to be whittled down to a few experts.

Hearing Examiner: I don't quite know how to understand your statement. If you are expressing concern that members of the public that are not going to be called by you as witnesses in your presentation, won't have a chance to speak. I was on the verge before you did your thing of trying to do something about that, because Miss Swisher has given me a piece of paper in which she's estimating the number of folks that are likely signed up to want to speak. And I'm thinking we need about an hour to get them in. If you're trying to tell me that your witnesses, your experts that you were going to call as part of your presentation aren't going to be here tomorrow that's another problem. Quite different from the public... Because you started out this by saying my key people won't be here tomorrow and then you drifted off into all the other folks won't be here. I'm prepared to deal with all the other folks in the next hour. I can't help you with your people that you're going to call as your speakers and your experts.

Elizabeth Mooney: I believe and correct me if I'm wrong, that there is one expert who is here tonight only. Paul.

Miss Bowers: We do have one that can't come tomorrow.

Elizabeth Mooney: And who cannot come tomorrow. And the others... Actually I expected that we were having a plat hearing that came first. And that the sign up was all the people. But that's my bad assumption.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: That's your bad assumption for not having looked at the rules of procedure to see how a consolidated hearing works. You had them for a long, long time so I have no sympathy there. Now, I would like to see if we can finish with this witness before we start hearing from the members of the public who are here. So let me ask again, do you have any cross examination that you would like to direct to Mr. Harvey.

Miss Bowers: Yes we do.

Hearing Examiner: Let's see if we can do that in a few minutes. If it looks like it's going to take too long than we'll make poor Mr. Harvey wait. I'd rather finish with the witness though before we start with the others.

Miss Bowers: Could you please define how many white trees are going to be removed and what is their definition for why are they being removed.

Ken Lauzen: White trees are non-significant trees.

Miss Bowers: How do you define non-significant?

Ken Lauzen: Non-significant trees are defined in the tree ordinance. The city of Brier tree ordinance as being less than 8 inches in caliper or diameter or they're either black locust, cottonwood, poplar, and alder. And it's spelled out.

Miss Bowers: Do you have a total number of white trees that are being removed?

Ken Lauzen: 383.

Miss Bowers: Then they have to be replaced at a 3:1 ratio?

Ken Lauzen: Not non-significant trees.

Miss Bowers: On the replacement trees potentially in the red, you have 330 that will have to be replaced.

Ken Lauzen: Of the red...?

Miss Bowers: You are going to take them out and you're going to replace with approximately 330.

Ken Lauzen: 333.

Miss Bowers: What size are those trees going to be?

Ken Lauzen: Those are required to be for deciduous trees, 3 inch caliper.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: And about how high...?

Ken Lauzen: 10 to 12 feet or so. And then 8 foot in height is for conifers.

Miss Bowers: Can you run through really briefly how many native species are going to be part of that replacement schedule?

Ken Lauzen: How many total like a percentage? Of the ones that are on here, I can't give you a percentage off the top of my head. I don't know it. It's a combination right now of some native species and some...

Miss Bowers: Would you say 50% native or 50%...?

Ken Lauzen: Close to that, yes. More than if you start including shrubs and ground covers. But as far as replacement trees go, as far as the whole landscape... As far as replacement trees go, it's close to 50/50.

Miss Bowers: Under the blue trees, there are a couple of them that are located near the wetlands C on the south side. I believe there is one blue on in the middle. It looks like it's blue.

Hearing Examiner: That's dark green.

Ken Lauzen: I don't see a blue.

Miss Bowers: Then that question is moot. If you have considered on any of the dead and hazardous blue trees, have you considered any of them being left as approximately 7 to 10 foot snags? Essentially they're topped but then they are left there for wildlife?

Ken Lauzen: I have not looked into that personally.

Miss Bowers: Why didn't you show the existing diameter of the tree on the tree plan? Isn't it required?

Ken Lauzen: I am not aware of whether that was required. Whether we would show for every single existing tree... Is that what you're asking? The caliper size...?

Miss Bowers: Right.

Ken Lauzen: I think it's provided separately in the reports and they're cross-referenced in the other exhibits.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: Does the tree plan show the actual canopy diameter of the trees? Or is it the trunk size...?

Ken Lauzen: This plan would be representative of the approximate canopy size. I can't say whether that's 100% accurate. That what we're seeing here is the exact drip line.

Miss Bowers: How can these plans show protection to the drip line of the tree as it relates to the proposed infrastructure?

Ken Lauzen: These plans are preliminary. They are not meant to represent the limits of erosion control or tree protection around the existing trees. It's not at this time.

Miss Bowers: Some of these significant trees, if you put in the fencing to protect the drip line, it will quite alter where any building can happen. Are they then going to be reclassified as hazardous or some other term so that they can be removed in phase 2?

Courtney Kaylor: And again, the question includes testimony on about the fencing of the trees so I object on that basis.

Hearing Examiner: Sustained.

Miss Bowers: You said the average size of the replacement trees will be approximately 3 inches.

Ken Lauzen: It's actually spelled out for the replacement tree requirements in the tree ordinance.

Hearing Examiner: that wasn't his testimony by the way. That's not what he said.

Miss Bowers: In the question that he just answered, I think that's what he said.

Hearing Examiner: You asked what size trees? He said if it's deciduous it has to be a minimum of 3 inch diameter. If it's a conifer tree, he said it has to be at least 8 feet tall. I don't recall him saying anything about an average size.

Miss Bowers: Okay, excuse me.

Elizabeth Mooney: Can I just ask the question.

Hearing Examiner: Go ahead. It's quicker.

Elizabeth Mooney: Between lot 4 and 5 and I'm basing this on having spoken to a landscape person who is not here, one thing that he pointed out...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Ask your question.

Elizabeth Mooney: Okay. On lot 3 there's a large red tree. If you look over on lot 4... I mean there are several large trees. On lot 4 there are lots of smaller trees. and based upon the contours and the slope that is quite significant on 4 and the size of the trees on 4 being small, it indicated to this person that perhaps that...

Courtney Kaylor: Again I am going to object. This is testimony not a question.

Hearing Examiner: Ask him a question, please.

Elizabeth Mooney: Do you think that there could be a slide on lot 4 and do you think that...?

Courtney Kaylor: I am going to object to this question. It's outside of the scope of his direct testimony.

Hearing Examiner: It's probably outside the scope of his expertise as well.

Courtney Kaylor: That as well.

Hearing Examiner: Sustained.

Elizabeth Mooney: Can I ask them about one more. To the left of lot 2, there's a large wet tree, the column of water...

Hearing Examiner: To the left of lot 2... Do you mean to the west of lot 2?

Elizabeth Mooney: To the west of lot 2...

Hearing Examiner: Is lot 1.

Elizabeth Mooney: No.

Hearing Examiner: Yes.

Elizabeth Mooney: Oh, it is lot 1.

Hearing Examiner: How do we know that they're wet trees? My page is dry.

Elizabeth Mooney: I believe that those are the types of trees that hold large columns of water.

Courtney Kaylor: Again I'm going to object because this is testimony.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Sustained.

Elizabeth Mooney: Are those trees that hold large columns of water in lot 1.

Hearing Examiner: that's a fair question.

Elizabeth Mooney: Thank you.

Ken Lauzen: Are the trees that exist...

Elizabeth Mooney: Are the trees in lot 1 that are large and white that you say are going to be removed, are those the types of trees that grow in wet areas that might hold large amounts of water.

Ken Lauzen: I would have to see what those exact species are.

Elizabeth Mooney: I think they're on your tree plan. I believe the spiky ones are evergreen so these might be cottonwoods.

Miss Bowers: According to your plan it says they're lumbar, poplar, they're \*\* black locusts and they're considered non-significant...

Ken Lauzen: So do those trees grow near where there's water?

Hearing Examiner: Hold it. Believe it or not, I'm trying to be patient. I am letting these two ladies talk at the same time over each other, which I normally never do. But I don't want you to think that I'm beating up on you. So I am letting you do stuff that I normally never allow people to do. Now Miss Kaylor is joining in and starting to talk on top of them. I've got to draw the line. One at a time...

Miss Bowers: On lot 1 they list some trees that are poplar, black locusts that are non-significant. Are those because that's in a wet area adjacent to the wetland, could those be trees actually be trees that hold large amounts of water.

Hearing Examiner: One at a time... This is not a tag team where one lady starts the question and somebody else finishes it.

Ken Lauzen: I can't answer the question of how...

Courtney Kaylor: I am going to object. There is not an indication on this plan that this is a wet are nor are the types of trees to be removed shown on this plan. It's the tree replacement schedule that identifies the type of tree. So I don't believe that our witness has the information that he needs to be able to answer these.



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Let me try a question. Do you know whether trees of the specie cottonwood, Lombardi poplar, alder, typically absorb or retain large quantities of water?

Ken Lauzen: Large quantities... I am not sure. No. To answer that simply, whether they retain large quantities of water...

Hearing Examiner: Other cross examination questions.

Miss Bowers: No.

Hearing Examiner: City.

Mr. Knutson: No questions.

Hearing Examiner: Thank you Mr. Harvey. We are going to interrupt the normal flow here and take public testimony. You folks can... Remember if you speak now, you will be able to be called by the appellants to testify tomorrow or later tonight or whenever we get to their time. So you can either speak now, go home and forget about it and never come back or you can stay. But if you pop up, you're going to have the 3 minute time limit and you can talk about the plat. You can talk about the appeal or anything. Hold on a minute, hands down. I happen to know this lady so I'll use her name. Miss Hoff are you requesting permission to speak or to ask a procedural question.

Miss Hoff: Procedural question. I would like to speak as a Brier citizen on the general plat as a part of the general plat hearing, but I am also listed as a witness by PERK appeal group.

Hearing Examiner: You cannot speak twice. Because their presentation is about the plat and the appeal... People who speak with them are going to be able to speak about both. So wait your turn. The gentleman in the green shirt also put your hand up. Is yours a procedural question?

Unidentified Male: basically the same question. My name is mentioned early on at the beginning of the meeting in regard to one of the submissions that had been made. I had trouble following it because I thought it was number 40 and I didn't see any 40 listed. Any P40's listed...

Hearing Examiner: There is a P40.

Unidentified Male: so it would help me to clarify if I still could possibly be called.

Hearing Examiner: I thought it was up to Miss Mooney, but it may be up to...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: He is on our witness list.

Hearing Examiner: She says you are still on her witness list. I can't control who they call. They could ignore you tomorrow and that's between you and them to meet in the parking lot and deal with it.

Paula Swisher: Peggy don't talk from back there. It's not picking you up. You need to come forward.

Hearing Examiner: I've already told her she's not going to talk twice.

Miss Hoff: You didn't answer my question entirely. If I'm called as a witness, I have been given questions to answer specific to the SEPA appeal. When would I be able to say something about horses in Brier or something that's not part of the SEPA appeal.

Hearing Examiner: At the same time that you're testifying if you want to talk about something that's beyond what they've given you direction to speak about, you can do it then. Procedural question because I want to give everybody the opportunity to raise your hand all at the same time.

Unidentified Male: You have the list of the people that want to talk. I'm one of the witnesses that might be called, but I have a job that I have to work tomorrow. Will I be called tonight or is my only chance is to stand up now.

Hearing Examiner: I think you're only chance is to... To be honest with you, we have 52 minutes and we got to get out of here. Any more procedural questions... We're killing time here with procedural questions.

Elizabeth Mooney: Is Paul Anderson here. He needs to be on tonight for whatever period of time for PERK. He absolutely has to be on tonight.

Hearing Examiner: Okay make sure he raises his hand. Okay no more procedural questions. Is there anybody in the public that wishes to testify? His hand went up first. The fact that you raised two hands is irrelevant to me. Put them down. Raise your right hand please sir. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Dennis Wick: As best I can.

Paula Swisher: Name and address please.

Dennis Wick: My name is Dennis Wick. 19802 47<sup>th</sup> Avenue northeast Lake Forest Park. I'm a commercial real estate appraiser. I have probably appraised hundreds of these things over the past few years so I understand how they work. I also

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

happen to own two multi-family properties about  $\frac{3}{4}$  of mile south of this project. It's a group called Lake Morris States which is a group of 21 homeowners. We have an association. I have been president of that association for the last 15 years. My real concern is peak flows in the wintertime. It seems like starting about 8 years ago, we started having problems with two private bridges that we own that go over that creek. There has been problems with rock walls coming down, cave in's, just a whole bunch of things. And it seems like it just happened relatively recently. \*\* in particular, one of my buildings is immediately of this southerly bridge that the association owns... It's a dirt bridge with 42" pipe. And last winter, I was over there a couple of times and the flows were coming out of this pipe which is tremendous, the pipe must have been  $\frac{3}{4}$  full and that stream was just a little monster. It really was. Now the stream right above my building south of that southerly bridge angles off the right about 25 feet down from the bridge... Last winter because of the flows coming out of that pipe, it ate away about 10 feet of the bank so that now I have something getting much, much closer to my foundation. I'm concerned about it. at the same time, I was on that bridge when these things were going like they were and on the inlet to the bridge, water had piled up over the pipe and it was probably about three or four feet above the pipe just sitting there pounding just trying to get through this 42 inch pipe. Now I know that storm detention systems take care of impervious water. Water on impervious soils, but they don't do much to help sheet flows and ground water flows. And my big concern is that overall the volume is going to increase so that in the next year or so I really think these bridges might fail. It's a concern. So what I would ask of you is that one of the conditions you make is that they do something to fix these bridges so that they won't be destroyed in the next couple of years. There is one on 192<sup>nd</sup> and one on 193<sup>rd</sup> and 61<sup>st</sup> less than a mile to the south. I brought a letter that I would like to present to you. On page 2, I've got a picture of the erosion that occurred last winter. You can see right by the erosion there is a deciduous tree that probably 15, 20 years old that was killed probably because of the erosion. I'm worried this year that it's going to get worse.

Hearing Examiner: Thank you Mr. Wick. Your letter is entered as Exhibit A6. I think that's the next available number. Yes sir, you. Then you next... Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

James Stewart: I so swear. My name is James Stewart. I live in Kenmore, Washington 5830 Northeast 204<sup>th</sup> Place. I am here representing the Maple Brook development which is immediately south of Sunbrook in Kenmore. The development directly impacts us on a number of different levels. My sympathies lie with PERK on the stream side. I think that many of the lots on the south side of this development right here are going to effectively drain into the stream. You can look at the level lines. If you interpret the map as a topological map, Mr. Examiner, the level lines all show a slope down that slope. I don't think that many of the lots are even going to drain into the storm drain... The retention pond or retention container... Lots 4, 5, and 6 are particularly bad. There are no significant trees on them because of the unstable soils that are there. In fact the tree map here offers the best example of interpreting both the

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

level curves and the instability of the soil. I think it would be \*\*... I don't think they are properly buildable lots to start with. 4, 5, and 6 don't even look like they would be very good. I think the sloughing that is there that you can see from the steepness of the level curves indicates that there is no hardpan underneath there at all. And in fact, I think they'll wind up with wetlands forming in the backyards of the people of the Maple Brook community. You might be able to get some mitigation for that if it wasn't for it's a different political jurisdiction of course. I would ask that you perhaps remove lots 4, 5, and 6 from consideration at least demand additional testing on the soils underneath to see if they can actually support building. And examination of the level lines indicates to me that many of those driveways... I don't know how you're going to make those driveways drain into the road. The ground goes the other way. It's right there in evidence that they're on \*\*... Look at the level lines.

Hearing Examiner: Thank you Mr. Stewart. The gentleman in the back had his hand up and I acknowledged him and then we'll take this fellow sitting on the floor over here. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

David Baker: Yes I do. My name is David Baker, mayor, city of Kenmore. Address 7416 northeast 169<sup>th</sup> Street, Kenmore, Washington, 98028. I'm here on behalf of the Kenmore city council. One of our concerns is we spent thousands and thousands of dollars updating our critical area ordinances. I believe Adolphson (ph. sp.) was the consultant that we used. We did a lot of studies on streams and wetlands and we classified this at a class 2 stream requiring 100 foot buffer. and we cannot understand how an arbitrary county line can change the classification of a stream from a class 2 requiring a hundred feet to whatever Snohomish County, Brier's classification is requiring 25 feet. We have been working or trying to work for a number of years to get inter-local agreements because being downstream, we catch all of the sediment that is coming down from any development that happens. And we suffer the brunt of it. We've done everything we can in our power to shore up 0056 to try to limit erosion on our side of it. And we have very little cooperation on the other side. So we are very, very concerned. Thank you.

Hearing Examiner: Thank you mayor. Mr. \*\* is next. Then we'll take the gentleman with the hat next. No, he's next.

Courtney Kaylor: Mr. Examiner, I believe this is Paul Anderson coming to testify. Mr. Anderson is listed as a witness on the appellant's witness list. I do have some questions for Mr. Anderson and I request either I be allowed the opportunity to cross examine him or that his testimony and letters in the record be excluded from the SEPA appeal.

Hearing Examiner: I'll certainly allow you to cross examine him. We'll just have to see how we go on time. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Paul Anderson: I do. Paul Anderson. My work address is 3190 160<sup>th</sup> Avenue southeast Bellevue 98008. I'm the Department of Ecology wetland specialist that covers Snohomish County. I'm concerned that the buffers that are proposed for the plat aren't going to adequately protect wetland functions. I am not quite clear on the applicant's wetland consultant's report says that city code allows a 25 foot buffer. My reading and interpretation of the code is that this is high intensity land use and that it should require a 50 foot buffer for category 4 wetlands. There are also was a small area of approximately 450 square feet. Mr. Sewell the applicant's wetland consultant estimated that size. there has been some disagreement as to whether or not it's a wetland and I provided comments to the city last spring and I believe in September that I believe that this is a wetland and that it was a regulated wetland. And the response that I got initially from the applicant's wetland consultant is they classified it as a cattle wallow and that it wasn't a regulated wetland. They have since agreed that it should be regulated or at least it should be mitigate for. It will be filled. It would likely be classified as an isolated wetland by the Army Corp of Engineers, but that designation does not affect state regulation. I agree that if the applicant chose to fill it, if they provided mitigation for it that the formal authorization from the state would not be required and that probably a letter would suffice. But I'm still concerned that the buffers proposed will not adequately protect wetland function.

Hearing Examiner: Thank you. Cross examination.

Courtney Kaylor: Good evening Mr. Anderson. I just have a couple of questions for you. First with regard to the 450 square foot area in the center of the site, is it your understanding that the criteria for whether this area qualifies as a wetland or not that it's in question is whether it has wetland hydrology? Is that consistent with your understanding...?

Paul Anderson: When I examined this area in May of 2008, I found that it did have wetland hydrology and it did meet the three wetland criteria.

Courtney Kaylor: Mr. Anderson did you examine the site... How many site visits did you conduct?

Paul Anderson: I conducted one site visit and that was on May 21 in 2008.

Courtney Kaylor: Do you feel that based on a single site visit, you can make a conclusive determination on whether this wetland meets the criteria for wetland hydrology?

Paul Anderson: It met wetland hydrology during my site visit and I believe it was a wetland at that time. The initial response from Mr. Sewell is that he didn't feel it was wetland and we've never been back to look at it since. I believe it does meet the regulatory definition.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Courtney Kaylor: Would it be your typical practice to evaluate whether wetland hydrology was present based on a single observation?

Paul Anderson: Yes.

Courtney Kaylor: So whether wetland hydrology was present sufficient to meet the criteria for wetland designation.

Paul Anderson: Yes, that's typical.

Courtney Kaylor: So if wetland hydrology was not present on another site visit, would you then that it would be typical to make a determination based on that site visit?

Paul Anderson: You can use different indicators for wetland hydrology. What I observed during my site visit was saturation to the surface. If you were to go out now as dry as it's been, you may need to look for other indicators other than saturation. Since I found saturation during my May site visit, I didn't look to see if there were other indicators there. I don't necessarily need to have the presence of water to verify a wetland hydrology exists.

Courtney Kaylor: Do you know what rainfall conditions existed immediately prior to your site visit?

Paul Anderson: It had been raining earlier that day, but I don't recall the rainfall amounts. I don't remember that it was excessive. I think it was a normal rainfall period at the time that I was on site.

Courtney Kaylor: Would you consider filling this wetland to be a de minimis (ph. sp.) environmental impact?

Paul Anderson: Yes I would.

Courtney Kaylor: Is it accurate that on June 4, 2008 you wrote a letter to the city addressing your concerns about this 450 square foot area?

Paul Anderson: I don't remember the date specifically, but I did send the city a follow up letter based on my site visit. And that seems to be in that time period.

Courtney Kaylor: I am just going to refresh your memory. Looking at Exhibit P16, page 4 can you tell me if you recognize this?

Paul Anderson: That's the letter from the Department of Ecology and it is to Mr. Cutts who was the planning director for the city of Brier at the time.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Courtney Kaylor: And the date is June 4, 2008.

Paul Anderson: It is.

Courtney Kaylor: Do you recall if you received a response to that letter from Mr. Sewell.

Paul Anderson: I did but it was some time later. It was in November if my memory serves me correctly. That's when he referred to this area as a cattle wallow.

Courtney Kaylor: Again refreshing your memory with Exhibit P16, page 1. This is a letter dated September 8, 2008 again from you to Jim Cutts and the first sentence says thank you for faxing copies of Sewell wetlands consulting July 21, 2008 letter. Do you recall then receiving the July 21 letter from Mr. Sewell?

Paul Anderson: I don't.

Courtney Kaylor: You don't recall. But is this your signature on this letter acknowledging receipt of it in September?

Paul Anderson: Yes it is.

Courtney Kaylor: Looking at Exhibit B11. Again just to refresh your memory on some of the dates. Is this a letter to you from Sewell Wetland consulting dated November 17, 2008?

Paul Anderson: Yes and that's the response that I was referring to that I recall getting from Mr. Sewell.

Courtney Kaylor: The last sentence of this later states on page 4, we would appreciate a follow up response from your office as soon as possible. When did you respond to that letter?

Paul Anderson: I don't recall exactly. I don't... We didn't have any correspondence until fairly recently. I don't remember if I responded in November or not.

Courtney Kaylor: So to the best of your recollection, you didn't respond to this letter until recently is that right?

Paul Anderson: Some time within the last couple of months, yes.

Courtney Kaylor: In any of your prior correspondence to the city, did you express a concern about wetland buffer size?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Paul Anderson: I don't recall if I did or not. My concern was with this area and the delineation itself which I believed look accurate except for the 450 square feet.

Courtney Kaylor: But you don't recall before tonight ever having expressed a concern on wetland buffer size to the city about this project?

Paul Anderson: Not specific to Sunbrook, no...

Courtney Kaylor: Thank you.

Hearing Examiner: Cross examination by the city.

Mr. Knutson: Just one second. No questions.

Hearing Examiner: I hate to take the time, but I need to ask you a couple of questions. You're speaking official for Department of Ecology tonight is that correct?

Paul Anderson: That's correct.

Hearing Examiner: What does Department of Ecology want me to do?

Paul Anderson: I think that more protective buffers or wider buffers would protect wetland functions. The applicant has proposed mitigation for the 450 square feet. Typically when mitigation is provided Department of Ecology requires buffers that are consistent with standards published in our wetland guidance. Because the applicant in this case has agreed to provide this mitigation, I am not requiring those buffers. But I don't think that 25 feet are consistent with best available science. I realize that those are the buffers under the city code, but I don't agree with the applicant's interpretation that this is a low intensity land use.

Hearing Examiner: we can debate... That's defined in the code.

Paul Anderson: It is. And my understanding is that it would require a 50 foot buffer. 50 feet would be better than 25.

Hearing Examiner: A number of years ago I ruled that single family residential under 12,500 was low intensity given the definitions in this city's code. Does Department of Ecology have a permitting authority which it will have available through it for which you can require wider buffers?

Paul Anderson: If I had not made a decision to consider the 450 square feet a deminimous (ph. sp.) impact, I could have used that authority. We do not have in the exemptions for small impact. Does that answer your question?



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Not necessarily. The three wetlands that you and the city and the appellants and I think everybody and the applicant all agree are wetlands, A, B and C. They're there and they're the ones that are being provided the buffer that you folks think is substandard.

Paul Anderson: Correct.

Hearing Examiner: But it's not because of them or their buffer that you have any authority to do anything.

Paul Anderson: That's correct other than comment as a large citizen.

Hearing Examiner: Other than large citizen and citizen that fully recognizes the limits of having to comply with adopted regulations sometimes whether you like it or not.

Paul Anderson: That's also correct.

Hearing Examiner: So it's the cattle wallow/wetland that brings your jurisdiction into this but you're being DOE's. But your letter says that that's a deminimous (ph. sp.) wetland go ahead and fill it.

Paul Anderson: If you provide mitigation, which is Mr. Sewell and I discussed. He agreed that mitigation would be provided. That mitigation should offset the loss of that area.

Hearing Examiner: If I were to have the same sympathies that you do, wanted bigger buffers on the other wetlands, you understand the regulatory world likely as well or better than I do in terms of wetlands, what would be my authority to require that?

Paul Anderson: If you weren't issuing a permit, you wouldn't have... Without issuing a permit, you wouldn't or I don't have the authority to require you to do anything if I'm simply providing comment, providing perspective.

Hearing Examiner: But I'm actually here in Brier, I'm recommending that someone else doing something I'm recommending to the city council. Don't I have to form my recommendation based on the municipality's laws.

Paul Anderson: You do. But \*\*...

Hearing Examiner: How can I go beyond that? What authority do I have to go beyond that?

Paul Anderson: You need to have an understanding of the legal requirements and an understanding of the science and ecological processes.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Let me stop you there. I understand that in the BAS literature, their indication is the buffers ought to be a minimum of 600 feet in order to preserve certain functions of wetlands. Am I throwing a number that's out there somewhere?

Paul Anderson: It's on the wider end of the range.

Hearing Examiner: I don't think I know a single municipality and I do hearing examiner work for about a dozen of them here in western Washington and I don't know of them that have a 600 foot buffer.

Paul Anderson: No.

Hearing Examiner: So let's say that I personally believe the 600 foot buffer was really a good thing. What authority do I have when I work for these jurisdictions that have anywhere from 25 to 100 or 200 foot buffers to require them the use of 600 foot buffer? That's what I'm looking for. What authority do you think I have?

Paul Anderson: \*\* perspective based on your personal preference, you don't have legal authority to do that...

Hearing Examiner: Okay. Do I have any legal authority other than my personal preference?

Paul Anderson: Your interpretation of the code... Now, if you say that development of this intensity meets the definition of low intensity land use under the Brier code than for a category 4 wetland, a 25 foot buffer is appropriate per code.

Hearing Examiner: So you're only dispute than really because like me, you recognize the limits of the code, you're... Your question is is this really low intensity or is this high intensity?

Paul Anderson: That's correct. And I think there's a difference of opinion from the state perspective versus the city's perspective.

Hearing Examiner: Okay, thank you very much.

Paul Anderson: I'm excused then?

Hearing Examiner: You are.

Elizabeth Mooney: Do we go redirect on this? I'm pretty sure we do.

Hearing Examiner: Yes. I'm sorry folks.

Elizabeth Mooney: This is the most important for everybody.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: That may not be true. Just start asking your questions.

Elizabeth Mooney: \*\* is good for us... Does SEPA provide the substantive authority to mitigate potential significant impacts?

Paula Swisher: You need to speak up. You are barely being picked up.

Paul Anderson: Yes, I believe so.

Miss Bowers: And if the fourth wetland is lost, could this lead to significant environmental impacts overall?

Paul Anderson: I wouldn't characterize the loss of the fourth wetland as a significant environmental impact.

Elizabeth Mooney: Even if this one wetland loss is de minimis (ph. sp.)? What about is it possible that there would be a cumulative loss of wetlands and a potential significant adverse environmental impact due to this wetland buffer being too small on the other one?

Hearing Examiner: I am sorry to laugh, but you've mixed so many topics in that question. If you don't understand the question, you can ask her to restate it.

Paul Anderson: I'm getting lost. I'm sorry. Could you rephrase it?

Miss Bowers: Even if this one wetland is de minimis (ph. sp.) and lots and the buffers are inadequate on the others...

Paul Anderson: Is that a significant environmental impact? No.

Miss Bowers: Okay.

Elizabeth Mooney: Can I just read this? It actually says even if this one wetland loss is de minimis (ph. sp.) it's important to ask you about the cumulative loss of wetlands and potential significant impact. Is SEPA the key due to your deciding de minimis (ph. sp.)?

Paul Anderson: Well there's two questions there at least. SEPA is not the key and from my job has not relationship to de minimis (ph. sp.). De minimis (ph. sp.) is the size of the wetland impact and that is something that we look at based on the quality of the wetland, the site and this is a small impact in my experience and other projects that ecology staff review.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Miss Bowers: Last question that I know about. On your questions, Mr. Galt, question 5 was asking about the numbering of the streams. Could you explain the fact that there are different numbers for the same stream?

Elizabeth Mooney: Is stream 1226334775...

Courtney Kaylor: I'm going to object to this question because it's outside the scope of his testimony.

Hearing Examiner: It's way outside. He's talking about wetlands. He's not here as a streams guy.

Elizabeth Mooney: It's actually not outside the scope. His letter is in the evidence as part of the city's evidence. His letter is what brought up to Nicole Gaudette stream 122...

Hearing Examiner: He put the number in it?

Elizabeth Mooney: Yes.

Hearing Examiner: On that basis, I'll let him answer it.

Paul Anderson: They are one in the same stream. The reason there are different numbers is that 0056 was the number that was assigned to this tributary based on the Washington stream catalog. I don't have the exact citation, but it was published by the Washington Department of Fisheries back in 1975 by Williams et al. And it classified streams by their wira (ph. sp.) and this is in Lake Washington wira (ph. sp.) 8. And I assume, I don't know their methodology for sure, but I assume as they went along. Here's stream 1. Here's stream 2. Whatever... This was assigned tributary 0056. 8-0056... The computer and the internet came along. The Department of Fish & Wildlife which was consolidated came up with an online stream viewer called Salmon-scape. When they did that, this is my interpretation. They came up with a new identification number for the streams. My interpretation of that is that the number includes the latitude and longitude which the website will explain and then it gives a different stream tributary designation. I think because it provides for more precise locations, there is some geographic component to that name. They have two different systems in place. They're looking at the same water body. They made a decision. Now it has a new number. That's where it came from.

Hearing Examiner: Okay.

Miss Bowers: I think that's all the questions.

Hearing Examiner: That actually raises a question in my mind. Since you're the stream number guy here tonight... Are you familiar with the Herrera study?

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Paul Anderson: I'm not.

Hearing Examiner: You're not. Okay. This stream 0056 has its mouth at Lake Washington. As one goes upstream, there are forks and branches. Do you from your knowledge know whether that stream number applies to all the forks and branches of that stream or did they get separate numbers?

Paul Anderson: I don't know is my answer.

Hearing Examiner: Thank you.

Courtney Kaylor: I have one redirect. Returning to the 450 square foot area and the question of wetland hydrology based on a single site visit, do you believe superior information could be obtained through monitor?

Paul Anderson: Monitoring can show you ground water levels. I'm assuming you're talking about putting in a ground water monitoring well. That's typically for... That's how hydrology is monitored. The other way that you can do it is to physically go out and take a look. The difficulty in using ground water monitoring data is it often doesn't show you that saturated zone above the water table. And if that saturated zone is within 12 inches of the surface that does meet the wetland hydrology criteria and you may not be able to show that through well monitoring. You've got couple of inches above it that are only saturated.

Courtney Kaylor: You've testified that on May 21, 2008 you believe that it's a wetland. Do you know whether it's a wetland today?

Paul Anderson: I would assume that it is, yes.

Courtney Kaylor: Not assuming, do you know with certainty that it is a wetland today?

Paul Anderson: Yes.

Courtney Kaylor: That today it meets the criteria for wetland...

Paul Anderson: Yes.

Courtney Kaylor: And how do you know that?

Paul Anderson: Because I observed sufficient hydrology, wetland vegetation and wetland soils during my site visit on May 21, 2008.

Courtney Kaylor: And how do you know that site conditions have not change.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Paul Anderson: Site conditions may have changed, but we have had a normal weather year for the most part up until the last few weeks. But I would still expect that I could find wetland hydrology indicators as I mentioned earlier. Not necessarily the presence of water itself, but indicators that water has been there such as oxidize \*\*... You can have plant roots that develop essentially rust zones around them where as the plants transpire, oxygen gets exchanged, water in the soil causes iron to precipitate and you can identify those zones. They are an indicator of wetland hydrology and you can use them in a dry season such as now.

Courtney Kaylor: Thank you.

Mr. Knutson: No questions.

Miss Bowers: I think we're done.

Hearing Examiner: Thank you Mr. Anderson. The gentleman with the hat on is the one that I recognized to speak next.

Dwight Butler: Hi there my name is...

Hearing Examiner: Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Dwight Butler: I do swear. My name is Dwight Butler. If you referred to Exhibit 39, I live in the Meadowbrook area in plat 15 directly south adjacent to this proposed development. Just a couple of quick comments... The same plots that were mentioned by Mr. James Stewart, I wanted to reiterate that those are in my exact backyard and almost all of the year until about two weeks ago, those are wet, very muddy. There's actually springs that seep out and when I bought my house my title stated that north of stream 0056, I am not to develop whatsoever. So it just seems illogical to me that the city of Brier looking up hill would allow flow levelers to be put in to drain into the land that I'm not allowed to use whatsoever. So that is all I have to say. Thank you.

Hearing Examiner: Thank you Mr. Butler. There's a hand right here. We'll take him. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Steve Plush: I do. Good evening Mr. Galt. I'm Steve Plush president of Lake Forest park stewardship foundation. As you know the proposed the Sunbrook development is in the upper watershed of stream 0056 a sediment bearing stream. We request that within the limits of the brier code that you impose the most stringent conditions to protect this watershed related to the following conditions. Ensure that wetlands on the site as you've been discussing are properly delineated, buffered and protected during any future construction and occupation. Ensure that any hazardous waste on the site as identified as cleaned up thoroughly and properly. And ensure that

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

the proposed storm water retention devices will retain storm water properly to protect the upper ridges of stream 0056. Also to ensure that the trees are retained and protected during any construction and subsequent occupation... Thank you.

Hearing Examiner: Thank you Mr. Plush. I'll look over to this far side. We'll take this gentleman next the fellow in the reddish shirt will follow him. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Jim Abbey: I do. My name is Jim Abbey. I live at 22384 33<sup>rd</sup> Place west here in Brier. I've lived out here in Brier since the late fifties before it was Brier. And I bring that up from a history standpoint because that's the question that I'm going to bring to you. I've been on the city council twice and I helped with the incorporation of Brier along with my dad. My question on the historical and heritage aspect of this property... This property was an old mink farm. There are some buildings still there from that mink farm. I would hate to see that the city of Brier, the residents of Brier do not get the chance to preserve their heritage and history without some sort of hearing that they can give about those buildings. Something that they can do about that site... so all I'm asking for is that the historical preservation. Part of development is considerateness.

Hearing Examiner: Thank you Mr. Abbey. The gentleman in the red shirt is next. Then we'll take the gentleman in the suit and then the whitish shirt. I don't do real good colors with my wife so I apologize if I get your colors wrong. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Tim Dawson: I do. My name is Tim Dawson. I am a property owner on lot 13 in the Maple Brook community which is directly south. My backyard property line is directly adjacent to the development. I have two pictures here that I'd like to submit which were taken December 3, 2007 that show the stream level and one bridge is on my property. The other is my neighbor's property, Jim Stewart who spoke earlier. That shows kind of how high the water can get in its current state. My concern as a property owner directly south of this property is property damage to my property, property damage to the bridges that I have on my property, property damage to my plants and to my lawn as was alluded to earlier. Most of the flow coming from those properties directly north of me are going to have sheet flow into my backyard. I don't want to have a swamp as a backyard. So I'm concerned with that. I'm concerned with the devaluing of my property by the increased amounts of water flow into my property or if there's great storm water maybe even removing water from the stream, lowering the amount of water going to the stream which concerns me. And then I'm also concerned with just the impact on the wildlife because we enjoy watching the birds and everything that is natural habitat of that location. So I ask that the Hearing Examiner request increased buffers along the southern edge of that property to help mitigate with the potential amount of sheet flow water that would impact my property. That's it.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Thank you Mr. Dawson. Mr. Dawson's photographs will be entered as Exhibits A7A and A7B. The gentleman in the suit is next. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Fred Stouder: I do. My name is Fred Stouder. I'm the city manager for the city of Kenmore. I'm here representing the city and would like to introduce a witness that we've asked to prepare expert testimony regarding the preliminary plat.

Hearing Examiner: Would you spell your last name for me?

Fred Stouder: City of Kenmore, 6700 northeast 181<sup>st</sup> Street in Kenmore... We previously have submitted two letters to this the city of Brier in relation to the SEPA determination and the preliminary plat. They reflect our concern regarding water quality, storm water and critical area regulations. We have requested that our consultants on these matters, to prepare testimony and memorandum that they introduced and I would like to also officially introduce the following three letters and two memos for the record. And I have those here for you and others. A letter dated June 18, 2008 to the city of Brier with the title, Sunbrook Preliminary plat MDNS. A letter dated 4/4/09 to the city of Brier titled Sunbrook Preliminary plat application. Memo dated June 18, 2009 prepared by OTAC with subject title Sunbrook Preliminary plat water quality memo dated June 19, 2009 prepared by OTAC with subject title Sunbrook preliminary plat, city of Brier, review of storm water issues and memo dated June 22, 2009 prepared by OTAC with subject title Sunbrook preliminary plat, city of Brier, review of critical area ordinances. I have a copy for you, the city, the applicant, the PERK. Hand those to you or the city clerk.

Hearing Examiner: You could just hand me one and one to the city clerk and then you can divvy the rest up as you wish.

Fred Stouder: I will provide these to the clerk. I am speaking rapidly of the \*\* time and appreciate everyone's patience that stayed on all sides of this issue... I'd like to introduce Suzanne Anderson who wants to prepare some recommendations and the city does request that you seriously consider these recommendations and impose these conditions that are being recommended by Miss Anderson who is a senior wetlands ecologist with OTAC. I would like to make one final comment just in general. I'm often reminded these days of extremely complex regulations, growth management, critical areas ordinance, wetland issues, the best available science that the thing more and more that reminds me in my old age and 40 years in local government service, a comment made over 50 years ago and that was a thing tends to be right when it respects the integrity and beauty and stability of the biotic community. It tends to be wrong when it does otherwise. This tells this project tends to be wrong. With that I would like to introduce Suzanne Anderson, our expert witness on this and she's going to summarize her recommendations for the sake of time.



**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: There is the gentleman in the back who is supposed to be recognized next.

Fred Stouder: That's however you want to handle the proceeding...

Hearing Examiner: I am going to hear him next. We will enter the letters that Mr. Stouder introduced as Exhibit A8, A through whatever they are. I'll figure that out after we're through tonight. Looks like there's five or six of them... Come on down. Theoretically we've only got three or four minutes, but I am going to push it a little bit if I can. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Neil Zimmerman: I do. My name is Neil Zimmerman. My address is 2527 241<sup>st</sup> place southwest. The house is across the street from us butt up to this site. One of the reasons I'm here...

Hearing Examiner: You're north of it.

Neil Zimmerman: I'm just north of it. Yes. I'm an avid bird watcher. I'm on the Seattle Audubon board and I've been monitoring this site for 17 years. And I got the copy of the Wildlife report and I believe there are a lot of inconsistencies and things left out in that report. One of the birds that was listed on there was the morning dove. Morning doves are basically are not found in this area. They're bird of Washington east of the cascades. But we do see band tail pigeons there on a regular basis and have seen them for 17 years. I thought this omission was interesting because band tail pigeons are on the Washington Department Fish & Wildlife's list of species of concern. Another bird that was missing was the pileated woodpecker. Those this bird would probably easily be missed, just a one-time trip or site visit there or something, they leave large holes in these snags over there. and one of the reasons the woodpecker is on the Washington priority species list by the Washington Fish & Wildlife is loss of habitat and a lot of that has to do with the loss of the blue trees on the map over there. Brier has their tree preservation ordinance and one of the things that has been brought out there is the intent and purpose it says to provide a haven for birds, which in turn assists in the control of insects. So I'm concerned about the loss of trees over there that would be leading to the loss of birdlife over there. I think that the wildlife report that was done is inaccurate. There are several birds that have probably never been seen there. There are common birds that were left out. I just think that \*\* science that was used for the wildlife report, I don't think it was very well done... I do have a letter that I'd like you to have.

Hearing Examiner: We will enter Mr. Zimmerman's letter as A9. Thank you sir.

Courtney Kaylor: The Kenmore memos go to 12 if you list them consecutively.

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: A8A, A8B, A8C... That's never going to get me to 12. We'll take the lady here that I short changed here a second ago.

Suzanne Anderson: Thank you Mr. Galt, I appreciate your consideration.

Hearing Examiner: Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Suzanne Anderson: I so swear. My name is Suzanne Anderson. I'm sadly of no relationship to Mr. Anderson from ecology and DERSON from OTAC, the address and I have to get it out here is 10230 Northeast Points Drive, Kirkland, Washington, 98033. The memos as you've said you read these. They will speak for themselves. Basically some of the more important issues included in the three memos, the memos were prepared by three different departments at OTAC. One was by civil engineers specializing in natural streams and storm water. One by a water quality expert and myself as a senior wetland ecologist... From just getting down to very short bulleted items from the storm water some of the concerns about the plat and we were reviewing one of the plat plans and the drainage report that existing detention is not accounted for in the existing condition model. In other words their storm water model is underestimating the total amount of storm water that is currently detained on the site. The Table 2 of the drainage report indicates that there will be increases in peak flows to this erosion prone stream. Our recommendations from this is to revise the existing conditions storm water model to account for flow, attenuation from the depressional areas on the site. The storm water runoff from the site should not increase existing peak flows and it should make ecology flow durations equal standard. Concerns about water quality despite Mr. Lauzen's testimony, the plans that are expert examined indicated that there's flows from several of the lots that are bypassing the detention treatment vault and these bypassed lots include both pollution generating impervious as well as pollution generating pervious surfaces. For example lawns and driveway... That needs to be accounted for. The proposed storm water wet vault does not meet ecology's minimum length to width dimension ratio of 3 feet of length to 1 foot of width. And the onsite storm water management does not satisfy the 2005 DOE manual. There are no provisions included for downspout diversion to most of the lots other than the ones that specifically have level spreaders. And there's no specifications for post construction soil quality and depth across the site as is required by the 2005 manual. The recommendations here are to provide basically follows the requirements of the 2005 ecology manual as is required Brier code. From the wetland memo, wetland C is adjacent to the stream. The delineation occurred back in 2005. There'd been a series of serious storms and flow issues since then. It is likely that the wetland boundaries have changed since that point. Normally depending on the jurisdiction, a delineation is only valid for anywhere between 3 to 5 years and it's been 4 years. If salmonids are present in that stream and unfortunately I don't get to hear that testimony, according to the Brier code despite the exemption for streams associated with the cemetery flow, it should be rated as a category 2 and afforded 100 to 200 foot buffer depending on determined land uses. Wetlands A and B might not be isolated as determined by Matt

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Bennett of the Corp. Matt was out there in June. It was dry. The applicant's own drainage report reports flow from those two wetlands across the east and this flow goes into a ditch and flows into 0056. Therefore they are not isolated. And this was information that the court did not have when they made that call. So that perhaps needs to be revisited. If those wetlands are not isolated that changes their category rating from 4 to 3 which under Brier code will increase their buffers to 50 to 100 feet again depending on land usage. There are not indications that Brier code was followed in terms of minimizing impacts to wetland A buffer. The roadway system comes within 10 feet of the wetland edge. 10 foot buffer provides little or no functional. There is no indication for one of the other big impacts is the outlet for the interceptor is located at the point where the buffer is the narrowest. The buffers are also proposed in the report anyways to include a pedestrian trail which will further decrease their functions. These are as I said are outlined in the memos. One big item is the inadequate buffer of 25 feet for a stream which has documented presence of salmonids the cutthroat trout. As people from Kenmore have testified, Kenmore requires 100 foot buffer. The unincorporated Snohomish County where the other stream where their storm water will be out letting, requires either 100 or 150 foot buffer depending on whether salmonids are present... By comparison, the Brier of 25 feet is really inadequate as especially what is compared to what best available science recommends which is 150 to 250 feet. So we request that you consider that aspect.

Hearing Examiner: Leaving aside SEPA, are you suggesting to me that I should require a buffer substantially granted required by the adopted ordinance of the city within which we're developing this property?

Suzanne Anderson: I don't have the code in front of me. I'm not an attorney. I'm not an expert at the city of Brier code, however there are provisions in there which do allow the director the decision maker to increase buffers for particularly important environmental resources. And a stream with salmonids certainly qualifies as such.

Hearing Examiner: This is an odd situation in a way because this is clearly an expert witness testifying. And we're already past 11 and I apologize to you folks who are waiting and still hoping to speak tonight if there are any of you. But I kind of think I need to ask the principal parties if they want to cross examine this witness.

Courtney Kaylor: Mr. Examiner, I haven't yet received a copy of this witness's reports. And I would like the opportunity to cross examine this witness, but I would really like the opportunity to take a look at her report and cross examine about her report as well.

Suzanne Anderson: It is my understanding that I'm strictly here as... I'm not an attorney, perhaps in the rule of \*\* curi I (ph. sp.) and not as an official witness... Certainly not for the city or for PERK...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: My but we're putting twists and turns into this hearing. I think that an expert witness regardless of what posture brought them there whether they were a party litigant or on behalf of amicus (ph. sp.) I think would be subject to cross examination by virtue of presenting oneself as an expert. Now, I will grant you I think if I remember correctly from the beginning, your forte of these three topics is the wetlands.

Suzanne Anderson: Correct.

Hearing Examiner: The others you're just summarizing what somebody else wrote... So she did not testify as an expert on those other topics.

Courtney Kaylor: That is true.

Hearing Examiner: And you probably can't come back tomorrow.

Suzanne Anderson: I leave on a plane to go visit my elderly parents and \*\*...

Hearing Examiner: Understood.

Courtney Kaylor: Mr. Examiner even though this is a consolidated hearing, testimony on SEPA issues should be limited to the appellants because they're the ones that have appealed SEPA.

Hearing Examiner: No, I can't agree with that. Some jurisdictions do expressly state in their rules that only the principal parties and persons that they call as witnesses can testify in an open appeal hearings. A lot of other jurisdictions including Brier, do not. Some actually go so far as to say anybody in the public can testify in an appeal hearing. And I appreciate that to most attorneys the notion of having non-parties (ph. sp.) and non-called witness testifying in an appeal is just kind of strange. But nevertheless that's the way it is.

Courtney Kaylor: Alright.

Hearing Examiner: Now the council can change the ordinance if they want to sometime in the future and that's all fine and dandy, but that doesn't do anything for us tonight.

Mr. Knutson: My suggestion Mr. Hearing Examiner is that given the lack of opportunity to prepare effective cross examination of the witness that's purportedly being offered by an expert by a non-party is that should go to the weight of the testimony that you attribute to it.

Hearing Examiner: I certainly can...

Mr. Knutson: It cannot be considered at the same level of the other expert testimony that's been...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: I certainly can do that. the other reality to is albeit you won't have a lot of time, you're consultants and what have you can take these memos home with them tonight and quite likely be able to offer their own take on things tomorrow. And then the downside is on Miss Anderson for not being able to be here tomorrow to hear the responses. But that's the way this cookie is going to crumble because she can't come tomorrow and the city of Kenmore did provide her materials in advance. So each side as a slight angst, which I'm not going to cure... You want to take a shot at questions or skip it? I appreciate that it's a tough box to put you in.

Courtney Kaylor: At this point, I don't think I have enough information about her testimony to do \*\* simply respond \*\* direct...

Hearing Examiner: I will definitely consider Mr. Knutson's suggestion.

Suzanne Anderson: If I may make one further observation, it was reported earlier by Mr. Lauzen that plot 1 would drain towards wetland C. judging by the topography and the location that's shown on the plans of the level spreader, it appears to me that that water coming out of the level spreader will instead be directed downstream of wetland C.

Hearing Examiner: Okay Thank you. Show of hands, how many of folks who are here haven't spoken yet and want to tonight. 3. Are you good for...?

Paula Swisher: Oh go for it.

Hearing Examiner: She's been here since 8 o'clock this morning.

Paula Swisher: And I've got to be back at 8 o'clock.

Hearing Examiner: This lady here first and then the two ladies along the back wall. I'll let you ladies duke out who goes second and who goes third. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Sue Kuestner: Yes I do. Sue Kuestner. 24208 23<sup>rd</sup> west Louffle (ph. sp.) 98021. Our property borders the northeast corner of our proposed development so we're in unincorporated Snohomish County. And I pretty much here to say the same things that other people have said that live south of the development because I'm really concerned about the water also. There is present flooding already. One of our neighbors that lives to the south, their house was flooding so they actually made a pipe that takes the water out and funnels it onto our property. And we have in the back and wetland and pond so it's okay if we take that little amount extra. But we don't want a whole development worth of water being \*\* onto our property... So we're pretty concerned about the storm water drainage that's being proposed. Do you want me to point out? This is one right here with the tree house on it. And the people...

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

Hearing Examiner: Lot 2. The acreage tract...

Sue Kuestner: \*\* already flood are already down in here... I know this property flows here already.

Hearing Examiner: that's lot 1. Thank you. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

I do. I'm Holly Kuestner. I'm Sue Kuestner's daughter. Shall I repeat the address?

Hearing Examiner: No. If it's the same as hers, you don't need to.

Holly Kuestner: I wanted to say something on behalf of the wildlife because I have heard a lot about the stream and the issues of drainage, but I wanted to also bring up the habitat that's going to be impacted. Because we own about an acre of the woods and our neighbor is directly to the north of us own another acre. But the great majority of the woods is going to be in the proposed development. I think it's about 14 acres that they're proposing to develop. And so basically the greater part of the woods is possibly going to be developed and then that will direct all the wildlife will only have 2 or 4 acres left if there's a buffer zone. And to us these are three different properties, but to the wildlife which included coyotes, raccoons, woodpeckers, owls to them it's only one forest. I have only seen coyotes rarely, but I have seen them and they already look fairly scrawny and underfed. So if the 14 acres are developed they won't have anywhere to go. So that's what I have to say on behalf of the wildlife. I was also interested in the designation between significant and insignificant trees because in these particular woods, the great majority of trees are Alderwoods which are considered insignificant. Thank you.

Hearing Examiner: Thank you. Do you swear or affirm that the testimony that you'll be offering in this hearing will be the truth, the whole truth and nothing but the truth?

Adrienne Clark: Yes, I do. Just a quick note about species... Name... my name is Adrienne Clark. Address is 6042 northeast 200<sup>th</sup> street, Kenmore 98028. Quick note on species, I in the area... I live a quarter mile downstream on the same stream in question directly across the street from what's known as the Lake Forest Park associate plat. That was developed several years ago. However I've been in those woods and my friend Holly, I've been in her woods a lot. I've noticed that the vegetation, the tree population is essentially identical with the population of fir trees, cottonwoods, alders, locusts, etc. The woods are pretty much identical. Throughout my \*\* of my house, I have seen many pileated woodpeckers... On one or two occasions I've seen what is I think called a morning dove. It was definitely a dove. I only knew it as wild dove. I have heard many owls and raccoons. We don't have any coyotes. But I've definitely seen in these identical woods very close to these woods I n question the two priority

**People for an Environmentally Responsibility Kenmore (PERK)  
Appeal of Brier's Sunbrook Project  
Day One – July 30, 2009**

species and concern species and I've seen a definite reoccurring population of them in a similar environment. And that's all.

Hearing Examiner: Thank you Miss Clark. That's it for public testimony tonight? Okay. We're going to stand at recess until 10 o'clock tomorrow morning. Before the principal parties, I would not recommend that you leave stuff here. I can't guarantee it. I'm going to cart all of my stuff home and I would recommend that you do the same.