

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
THE LEAVITT COMPANIES, INC.) **FILE NO. 04 110343**
)
Major revision to the existing plat/PRD of)
Greenleaf to add 23 new single-family lots)

DATE OF DECISION: July 6, 2006

PLAT/PROJECT NAME: *Greenleaf at Snohomish Cascade, Sector 7, Division 2*

DECISION (SUMMARY): The requested major revision to add 23 single-family lots is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located approximately 400 feet southwest of the intersection of 79th Avenue SE and 132nd Place SE, currently shown as Tract 901 (future development tract) on the plat of *Greenleaf at Snohomish Cascade*, Snohomish, Washington.

ACREAGE: 34 acres

NUMBER OF LOTS: 23

AVERAGE LOT SIZE: 10,170 square feet

MINIMUM LOT SIZE: 8,732 square feet

DENSITY: .84 du/ac (gross)
3.88 du/ac (net)

ZONING: PRD-9,600 with rezone contract

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)
Subarea Plan: Cathcart-Maltby-Clearview
Subarea Plan Designation: Master Planned Community/Environmentally Sensitive

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approval subject to conditions
Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 21, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 21, 22 and 23)

A SEPA determination was made on March 17, 2006. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on May 31, 2006, the 250th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on May 31, 2006 at 11:08 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, the Leavitt Companies, Inc. was represented by Paul Leavitt and his consultants, Dennis Derickson and Jack Molver of David Evans & Associates. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services. No member of the general public attended the hearing. However, a pre-hearing e-mail (Exhibit 27) sent February 8, 2005 (more than a year ago) by Mark Simpson urged care to be sure drainage does not alter the water supply to his berries, especially during July and August annually.

3. A letter (Exhibit 26) dated January 6, 2005 (a year and a half ago) had been submitted on behalf of the Marshland Flood Control District by its attorney, Gary W. Brandstetter requesting a condition upon approval requiring covenants or notes on the face of the plat (or both) authorizing Marshland Flood Control District to assess Lots in accordance with applicable law for costs and expenses attributable to acceptance of surface water runoff generated by the project. The applicant agreed at the May 31, 2006 hearing to accept such a condition. (Exhibit 42) The County objected at hearing to imposing such a requirement as a condition upon approval, arguing that such payments should be left to the applicant and the Marshland Flood Control District. Post-hearing, on June 5, 2006 the Marshland Flood Control District by its attorney submitted written argument (Exhibit 43) supporting imposition of the condition. By Order entered June 13, the Examiner reopened the record until June 21, 2006 to permit written response to the District's June 5 submittal. No response was received. Having considered the issues, the Examiner imposes the condition herein as requested by the District, in part because of the importance of drainage design and maintenance to the above-mentioned blueberry farm of Mark Simpson.
4. The hearing concluded at 11:47 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. Nearly 30 years ago in 1979, Snohomish Cascade was approved as a master planned community on 1,400 acres to contain 4,300 dwellings. (File No. 02-105329) In 1987, condemnation of 380 acres for the Cathcart landfill reduced the acreage to 947 acres for 3,035 homes. Development remains subject to the rezone contract and master plan, under which phased review requires, inter alia, sector plan approval by the Planning Commission. The Planning Commission granted that approval for Sector 7 as amended January 24, 2006. In proper sequence, the Department of Planning and Development Services approved the Division 2 division of development on May 4, 2006. The next procedural step places the related Sector 7, Division 2, 23-lot preliminary plat and planned residential development of 35 acres before the Hearing Examiner in the instant proceeding as a major revision to the originally approved master plan. No amendment of a related Shoreline Substantial Development Permit is proposed or required. The subject site was designated a future development tract (Tract 901) on the original plat.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,128.00 for each new single-family home.

5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. There are four wetlands and three streams on the property. Apart from one of the wetlands, which is to be filled to accommodate one of the lots, the critical areas will be preserved and placed within Native Growth Protection Area tracts. Approximately 6,205 square feet of wetland buffer within Tract 805 will be temporarily impacted by construction of a new sewer force main and approximately 1,635 square feet of wetland buffer located in Tract 802 will be impacted by construction of a bioswale. Mitigation for these impacts will be accomplished by creating additional wetland area, by restoring disturbed areas to pre-construction conditions and by planting additional native trees and shrubs within certain wetland and buffer areas. Those actions result in protection of the headwaters of the stream important for irrigation of the blueberry crop of Mark Simpson. (Exhibit 27)
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The subject property is designated Urban Low Density Residential (ULDR: 4-6 du/ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. No rezone is proposed.
12. As noted under "Public Hearing" above, the Examiner finds as fact that the master plan drainage to a branch of the slough of the Snohomish River involves drainage affecting areas within the responsibility of the Marshland Flood Control District. Thus, it is warranted to require that the District be reimbursed by assessment power against the subject 23 lots. The recommended language from Outlook Ridge Assessment Provision" (Exhibit 26) is added herein as a condition upon approval of this major revision. (See Condition C-vii)
13. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
14. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report except to add Condition C-vii.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and(4) the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 15B) received by the Department of Planning and Development Services on February 28, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on March 17, 2006 (Exhibit 15E), Conceptual Building Elevations received by PDS on December 21, 2004 (Exhibit 4) and Detailed Landscape and Recreation approved per condition B.ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 17 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment.
 - ii. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A Final Mitigation Plan shall be submitted for review and approval during the construction review phase of this project, based on the Revised February 24, 2006 Critical Areas Study by David Evans and Associates, Inc.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,162.82 per lot for mitigation of impacts on county roads paid to the County,
 - \$140.83 per lot for mitigation of impacts on City streets for the city of Mill Creek paid to the City. Proof of payment shall be provided.
 - \$75.75 per lot for Transportation Demand Management (TDM) paid to the County,

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- ii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-110343 SD.
- iii. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
- iv. “The dwelling units within this development are subject to park impact fees in the amount of \$1,128.00 per newly approved dwelling unit, as mitigation for impacts to the Snohomish park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by December 21, 2009 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
- v. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010.”
- vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;
 - "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”
- vii. Each lot may be subject to periodic assessments or charges levied by the Board for the benefit of Marshland Flood Control District (“Marshland”) to offset any increase in Marshland’s operating costs and expenses attributable to increased surface water runoff, increased siltations, or increased electricity costs of pumping water caused by acceptance of surface water runoff generated by the Project. The amount to be assessed against each lot shall be determined by Marshland in accordance with applicable law; provided, however, that any such assessment shall be in an amount equal to any surface water assessment then levied against such lot by Snohomish County, less the normal administrative costs of levying and collecting the assessment; and provided further, that Marshland shall not be entitled to any assessment from any lot or owner unless and until Snohomish County has ceased making payments to Marshland for Marshland’s

management of surface water runoff from the Project, as such payments are currently made pursuant to an interlocal agreement between Marshland and Snohomish County, as authorized by RCW Chapter 39.34.

D. Prior to recording of the final plat:

- i. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.
- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- iii. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b).
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- v. The Final Critical Areas Mitigation Plan shall have been satisfactorily implemented.
- vi. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development.

E. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a major revision to the existing plat/planned residential development of *Greenleaf at Snohomish Cascade* to add a new division consisting of 23 new lots is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion 4 above.

Decision issued this 6th day of July 2006.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JULY 17, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JULY 20, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin
Department of Public Works: Andrew Smith

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
