

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
ROF DEVELOPMENTS, LLC.)
(*L33-1 Myers*))
)
for a rezone of 38.12 acres from R-7,200-DPO to R-7,200)
with preliminary plat for a 180-lot subdivision using lot size)
averaging)

FILE NO. 04 110993

DATE OF DECISION: September 29, 2005

DECISION (SUMMARY): The application for the rezone and for the subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on both sides of 79th Avenue SE. Both entrances are approximately 600 feet north of the intersection of 79th Avenue SE and 15th Place SE (Grace Lane).

ACREAGE: 38.12 acres

NUMBER OF LOTS: 180

AVERAGE LOT SIZE: 7,276 square feet

MINIMUM LOT SIZE: 3,322 square feet

DENSITY: 4.70 du/ac (gross)
7.53 du/ac (net)

ZONING: CURRENT: R-7,200-DPO
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (6 du/ac)
Subarea Plan: Snohomish/Lake Stevens
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water: Snohomish County PUD
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

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 July 20, 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 12-15)

A SEPA determination was made on January 10, 2005. (Exhibit 11) No appeal was filed.

The Examiner held an open record hearing on September 22, 2005, the 114th 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 September 22, 2005 at 1:31 p.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.

2. The applicant, ROF Developments, LLC, was represented by Lafe Hermansen of Barclays North, Inc. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services and by Mark Westenskow of the Department of Public Works.
3. No member of the public testified. Two letters of concern were submitted pre-hearing: one by Linda and Tim Miller and one by Jon Dalberg. (See Finding 4, below)
4. The hearing concluded at 1:45 p.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, 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 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 Protection Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone of 38.12 acres from R-7,200-DPO to R-7,200 in order to construct a 180-lot subdivision using lot size averaging. Average weekday vehicle trips are 1,609, of which 126 are in the morning peak hour and 170 are evening peak hour trips.
4. Linda and Tim Miller own property abutting 300 feet of the north property line of the subject plat. The Miller's write (Exhibit 17) that they have lived there for 13 years and fear the quality of their lives and the value of their property will be diminished by the six homes of the subject plat to be built along the common property line and by the additional vehicular traffic. They request for privacy an eight foot fence be required of this developer adjoining their property. However, the evidence of record does not show cause to require that the proposed single-family homes on small lots warrant such a buffer from adjacent single-family homes existing or yet to be built on the Miller's property.
5. The Millers describe in detail current traffic congestion and back-ups in the vicinity, as does Jon Dalberg. (Exhibit 18) The Millers and Mr. Dalberg cite specific locations and driving maneuvers at specific times of day to highlight the plight of motorists now before approximately 800 homes' 8,000 daily trips are added by new plats by Barclay's North in the vicinity, including Boggs, Meyers (the subject plat), Morris, Osborne and Pasedera. They urge that the transportation infrastructure should be in place before more dwellings are built. They specify needed street widening and signalization locations.

6. The DPW reviewed the request with regard to traffic mitigation and road design standards. That 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 that review, the DPW determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$896.00 for each new single-family home.
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. An approximately half-acre Category 3 wetland is located in the northwest corner of the subject site and extends offsite to the north and west. Three streams are on the site. The staff report notes that the critical areas study and mitigation plan for this project comply with the critical areas regulations of Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
10. 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).
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
12. The property is designated Urban Low Density Residential (ULDR 6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
13. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
14. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

15. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) the proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

16. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
17. 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.
18. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no evidence was submitted contrary to the requirements of Chapter 30.42A, the application is presumed to meet these requirements.

5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat received by the Department of Planning and Development Services on August 15, 2005 (Exhibits 9A through 9D) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/ construction permits by the County:
- i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The plattor 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 based on the Critical Areas Study and Buffer Mitigation Plan prepared by The Jay Group Inc. dated May 7, 2004 (Exhibit 16B) and based on the final approved design of the stormwater outfall pipe and release structure into Fox Creek, shall be submitted for review and approval during the construction review phase of this project.
 - iv. A final landscape plan, based on the landscape plan submitted as Exhibits 9N through 9V, shall be submitted for review and approval during the construction review phase of this project.
 - v. Record a Concomitant Agreement, based on the draft copy submitted as Exhibit 16C, that identifies the required Development Phasing Overlay Transportation and Surface Water improvements and/or any agreed to Alternative Technical Solutions, the timing to the completion of the improvements, the financing of those improvements and language that identifies the transfer of the obligation.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens School District No. 4 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. Credit shall be given for 5 existing parcel(s). Lot(s) 1 through 5 shall receive credit.”

ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

- \$3,012.77 per lot for mitigation of impacts on county roads paid to the County,
- \$2.72 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-09)
- \$72.85 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID #DOT-08)

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

iii. The temporary turnaround easement required on Lots 171, 172, 173, and 174 shall be extinguished when the Road “D” is extended to the north within the abutting property. [SCC 30.66B.420]

iv. The temporary turnaround easement required on Tract 993 shall be extinguished when the Road “E” is extended to the south within the abutting property. [SCC 30.66B.420]

v. No lots within the plat shall be permitted to take access via 79th Avenue SE. [SCC 30.66B.420]

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."

D. Prior to recording of the final plat:

i. The developer shall pay the County \$896.00 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

These payments are due prior to or at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by the Department of Planning and Development Services.

- ii. Construct urban standard frontage improvements along 79th Avenue SE, according to EDDS standard plan 3-020 and 3-030 A/B. (Road Section: Two travel lanes plus center turn lane plus two bike lanes.) [SCC 30.66B.410]
- iii. Vegetation shall be restricted within sight distance triangles to a maximum height of 3.5 feet. [SCC 30.66B.410]
- iv. Satisfy the requirements of the Development Phasing Overlay area. [SCC 30.33C.040]
- v. 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 plat 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.

- vi. The final wetland mitigation plan shall be completely implemented.
- E. In conformity with applicable standards and timing requirements:
- i. All required plat and detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

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

- 6. Any conclusion in this 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 requests for a preliminary plat for a 180-lot subdivision utilizing lot size averaging provisions and for a rezone from Residential-7,200-DPO to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 5 above.

Decision issued this 29th day of September, 2005.

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 **OCTOBER 10, 2005**. 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 **OCTOBER 13, 2005** 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: Erik Olson
Department of Public Works: Mark Westenskow

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.
--