

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: August 18, 2005

PLAT/PROJECT NAME: Winslow Properties

APPLICANT/
LANDOWNER: Christopher Winslow

FILE NO.: 04 112293

TYPE OF REQUEST: Preliminary Plat approval to subdivide a 13.86 acre property into 45 lots utilizing the lot size averaging provisions of SCC 30.23.210.

DECISION (SUMMARY): Approved subject to Conditions

BASIC INFORMATION

GENERAL LOCATION: 3501 Sunnyside Blvd., Marysville, Washington

ACREAGE: 13.86 acres

NUMBER OF LOTS: 45

AVERAGE LOT SIZE: 8,043 square feet

MINIMUM LOT SIZE: 5,705 square feet

DENSITY: 3.2 du/ac (gross)
5.3 du/ac (net)

OPEN SPACE: 1.89 acres

ZONING: Residential-9,600 (R-9,600)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential – Limited (4-5 du/ac)
Marysville UGA only
Subarea Plan: Snohomish – Lake Stevens
Subarea Plan Designation: Suburban (2-4 du/ac)

UTILITIES:

Water: Snohomish County PUD No. 1
Sewage: City of Marysville

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

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 3, 2004. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on July 21, 2005 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on June 2, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on August 3, 2005, the 35th 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 August 3, 2005 at 9:03 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Roger Cecil, representing the applicant, appeared and stated five existing homes shall remain on the property and there will be 40 new lots. He stated that he agrees with the PDS staff report and the conditions.
3. Monica McLaughlin of PDS appeared and recommended one minor correction to the staff report.
4. No one appeared in opposition to the request.

The hearing concluded at 9:10 a.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for Preliminary Plat approval to subdivide a 13.86 acre property into 45 lots utilizing lot size averaging. Five existing homes will remain on the site. Access to the lots will be provided by new public roads that will intersect with Sunnyside Blvd. and 66th Avenue NE.
4. West of the subject parcel (across Sunnyside Blvd.) land is zoned single-family residential, while to the east are new plats of *Wilderun West* and *Olympic Sunset*. To the south is the plat of *Sunset Boulevard* and to the north is a single-family residence. The zoning of the property and the development of the surrounding properties is R-9,600.
5. No one appeared at the hearing or submitted letters in opposition to the request
6. 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.
7. 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. (See Pages 3-6, Exhibit 34)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There are two wetlands on the site with Wetland A, a large Category 2 wetland, which is located on the eastern part of the site and extends offsite to adjoining properties. Wetland D, a small Category 4 wetland, is located just inside the north property line in the central portion of the site. Both wetlands on the site will be preserved from development and they will remain undisturbed and protected with a minimum 25-foot wide Native Growth Protection Area (NGPA) buffer in accordance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
10. The property is divided into two drainage basins with the western two-thirds of the site draining toward Sunnyside Blvd. and the eastern one-third of the site draining toward the Category 2 wetland. 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. The Health District recommends that the existing on-site draining system be abandoned.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The subject property is designated as Urban Low Density Residential – Limited (4-5 du/ac) Marysville UGA Only on the Future Land Use map and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Low Density Residential- Limited (4-5) designation allows mostly detached housing developments on larger lot sizes. It is applied in a portion of the Sunnyside area that is confined to the lowest density urban zone because of environmental constraints and difficulties in service provision. Land in this category may be developed at a density of 4-5 du/ac and one of the implementing zones is the R-9,600 zone which is the case here.
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. 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.
16. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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 certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request for development of this property to single-family lots is consistent in size to the surrounding developments and will allow for the development of single-family homes in this rapidly developing part of Snohomish County near the City of Marysville.
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 (PDS) on July 29, 2005 (Exhibit 14) shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.

- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. The plat 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.
 - ii. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 8.
 - iii. A final wetland/buffer mitigation plan based on the revised March 21, 2005 Critical Areas Report and Wetland/Buffer Enhancement Plan by Talasaea Consultants (Exhibit 16) shall be submitted for review and approval during the construction review phase of this project.

- 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 Marysville 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. Credit shall be given for five existing parcels. Lots 9, 18, 28, 37, and 43 (containing the existing homes) shall receive credit."
 - ii. 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."
 - iii. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.
 - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$1,896.46 per lot for mitigation of impacts on county roads paid to the County,
 - \$1,245.94 per lot for mitigation of impacts on Marysville streets paid to the City.
 - \$209.68 per lot for mitigation of impacts on Arlington streets paid to the City.

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

- v. The final plat shall show a 35-foot right-of-way dedication along the property frontage with Sunnyside Boulevard to total 35 feet from the right-of-way centerline.
- vi. “Your real property is within, adjacent to, or within 1,300 feet of designated farmland; therefore, you may be subject to inconveniences or discomforts arising from agricultural activities, including but not limited to noise, odors, fumes, dust, smoke, the operation of machinery of any kind (including aircraft), the storage and disposal of manure, the application by spraying or otherwise of chemical or organic fertilizers, soil amendments, herbicides and pesticides, hours of operation, and other agricultural activities.

Snohomish county has adopted Agricultural Lands Regulations (chapter 30.32B SCC) which may affect you and your land. You may obtain a copy of Chapter 30.32B SCC from Snohomish County.

A provision of chapter 30.32B SCC provides that “agricultural activities conducted on designated farmlands in compliance with acceptable agriculture practices and established prior to surrounding non-agricultural activities are presumed to be reasonable and shall not be found to constitute a nuisance unless the activities have a substantial adverse effect on the public health and safety.”

This disclosure applies to the real property which is subject to a development or building permit as of the date of the development or building permit approval or, in the case of real property transfers, the disclosure applies to the subject property as of the date of the transfer. This disclosure may not be applicable thereafter if areas designated farmland are changed from the farmland designation.

Nothing in chapter 30.32B SCC shall affect or impair any right to sue for damages.”

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage with Sunnyside Boulevard; unless bonding of improvements is allowed by the Department of Planning and Development Services, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. 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.

- iii. The final wetland mitigation plan shall be completely implemented.
- iv. The detention pond landscaping shall be installed and inspected.
- v. The developer shall pay the County \$896.00 per single-family unit as mitigation for impacts to the Snohomish Valley community area of the County parks system in accordance with SCC 30.66A. 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.

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 Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a 45 lot subdivision utilizing lot size averaging is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 18th day of August, 2005.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **AUGUST 29, 2005, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 1, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin
Department of Public Works: Ann Goetz

<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>
