

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: September 12, 2005

PLAT/PROJECT NAME: *NOBLE COURT DIVISION 2*

APPLICANT/
LANDOWNER: William E. Shields

FILE NO.: 04 116603

TYPE OF REQUEST: REZONE from Planned Residential Development 9600 (PRD-9600) to Residential-7200 (R-7200) of .58 acres and a 32 lot SUBDIVISION utilizing lot size averaging

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located on the north side of 2nd Street SE, approximately 500 feet east of its intersection with Rhodora Heights Road

ACREAGE: 5.76

DENSITY: 5.56 du/ac (gross)
9.50 du/ac (net)

NUMBER OF LOTS: 32

AVERAGE LOT SIZE: 4,586 square feet

MINIMUM LOT SIZE: 3600 square feet

OPEN SPACE: 1.97 acres-34.2% of the site area

ZONING: CURRENT: R-7200 and PRD-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Public Utility District No. 1
Sewage: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the revised Master Application on May 13, 2005. (Exhibit 7)

The Hearing Examiner (Examiner) made a site familiarization visit on August 19, 2005 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 15, 16 and 17)

A SEPA determination was made on June 17, 2005. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on August 24, 2005, the 121st 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 24, 2005 at 3:00 p.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. Jack Molver, David Evans and Associates, appeared on behalf of the applicant. He stated that there will be approximately 1.9 acres of open space. He stated that the citizens were concerned about drainage, however it will exit the property from a drainage collection area thereby lessening the overall impacts. He stated that they will provide for loss of habitat and indicated that he had no objection to the PDS recommended conditions.

With regard to cutting of the trees, he stated that they had paid a penalty which was the double price for the grading permit.

3. Mr. Bill Shiels appeared and stated that there was the logging violation which was prior to their purchase.
4. Mr. David Radabaugh, PDS, stated that the Forest Practices permit was issued and submitted Exhibits 30 and 31.

5. Mr. William Haimes appeared on behalf of the Eastlake Park Homeowners Association and stated that they are not abutters to the property. He indicated that the illegal grading has changed and affected the stream. He indicated that the wetland mitigation plan looks pretty good, but that the stream should be a Type 4 stream and it should indicate what water will be applied to keep it up.
6. Ms. Marlene Sweet appeared and submitted a picture of what damage the grading had done. (Exhibit 32) She indicated that she is requesting that they repair or restore the stream corridor to the area that was damaged so that it functions as a gently flowing stream as it had in the past.
7. Mr. Radabaugh appeared and stated that this a Type 4 stream. He indicated that in answer to the Examiner's questions, he needs to have Mr. Patrick McGraner, the county biologist, review it for mitigation and an adequate source of water.
8. The matter was continued for one week, until August 31, 2005, to allow additional information to be submitted. The Examiner indicated that once that information was submitted, he would allow a few days if other parties wished to comment on it.

The hearing concluded at 4:35 p.m.

NOTE: Audio tapes of this 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. Several letters of concern were received and parties appeared to testify to their concerns with regard to traffic, and especially with regard to the prior retention and maintenance of the previously existing stream, which had been destroyed in the grading and cutting of the trees.
4. The request is for a rezone from PRD-9600 to R-7200 on two parcels containing 5.58 acres and a 32 lot subdivision utilizing lot size averaging on approximately 5.62 acres. The property currently is vacant and access will be provided by a new public road system connecting to 2nd Street SE, an existing public road.
5. An existing Type 4 stream and associated Category 2 wetland occupies the eastern one-quarter of the site. *Noble Court* was also a planned residential development and a revision to the *Noble Court* PRD will be required as a condition of approval.
6. The property is surrounded by residential development with the recorded plat of *Noble Court* located east and south of the property. The property to the east is zoned PRD-9600 as is the property to the south.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1019.00 for each new single-family home.

8. 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 31)
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
10. Drainage runoff will be routed from all areas to be developed through an existing detention pond that will be re-sized to address the additional stormwater. 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 and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations.
12. Public water and sewer service will be available for this development as well as electrical power.
13. The property is designated Urban Low Density Residential-Limited (ULDR-L 6) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. This allows 6 dwelling units per acre. This designation provides for mostly detached housing development on larger lot sizes and is applied to most of the non-constrained ULDR in the Lake Stevens UGA. Land in this category may be developed at a density of 6 du/ac with implementing zones including R-7,200 and PRD-7200 zones, 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 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.
16. 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.

17. Questions were raised with regard to whether or not the applicant has to prove item (2), above. A reading of this statute states that the rezoning may be approved “only when all the following criteria are met.”

There is no doubt from a reading of this statute adopted by the Council that proof must be given to support “a substantial relationship to the public health, safety and welfare.”

18. 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.

19. A large amount of testimony was given with regard to the wetlands which will be used to replace the wetlands, and critical areas that were destroyed when the property was logged. The Examiner believes that this is the part of the proof that is required to show that the proposal bears a substantial relationship to the public health, safety and welfare. In fact, it is a very critical part.

In response to the Examiner’s request for more information, the following was received:

- Exhibit 34 Memorandum to Hearing Examiner from PDS dated 8-30-05
Exhibit 35 E-mail to David Radabaugh, PDS from Patrick McGraner, PDS dated 8-29-05
Exhibit 36 E-mail to Hearing Examiner from Bill Haines, Eastlake Park Board of Directors dated 8-30-05
Exhibit 37 E-mail to Hearing Examiner from Marlene Sweet dated 8-30-05

The Examiner carefully reviewed this information, as well as the wetland report (Exhibit 9). It should be noted that the applicant chose not to submit any further clarifying information, so the Examiner was left only with the information submitted by PDS and the property owners, and his review of the existing wetlands report.

This review was had pursuant to Chapter 30.62 SCC which calls for the Type 4 stream associated with a Category 2 wetland and four other Category 3 wetlands. This Category 2 wetland will be enlarged and enhanced and the stream and largest wetland will be placed in the Native Growth Protection Area for future protection and preservation.

20. 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, except that conditions were added by the Examiner to insure that the wetlands and the stream are properly protected both now and in the future.

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. With regard to the stream and the wetlands, the Examiner still lacked complete information regarding how the proposed stream will be restored and protected. While the wetland plan offers some support, there are still gaps in this very critical item and therefore the Examiner is imposing Examiner's Condition G, since no evidence was submitted to refute the proposed conditions of Mr. Haimes which appear to be reasonable.
5. If the required conditions are met the wetlands will be properly restored and preserved and become a vital part to the development of the homes in this attractive area of the county.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The preliminary plat received by PDS on May 13, 2005 (Exhibit 8) 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 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.
 - iii. A final mitigation plan based on the *Critical Areas Study and Buffer Mitigation Plan* prepared by Talasaea Consultants Inc. dated May 13, 2005 (Exhibit 9) shall be submitted for review and approval during the construction review phase of this project.
 - iv. A grading permit to resolve the code enforcement case under file number CT 98-108540 shall have been obtained.
- 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 one existing parcel. Lot 1 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:

\$3,063.84 per lot for mitigation of impacts on county roads paid to the county,

\$123.14 per lot for mitigation of impacts on DOT-8 (SR9 at SR2), paid to the State Department of Transportation

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. 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."

- iv. A parks mitigation fee of \$1,019.00 per new dwelling unit as mitigation for parks and recreation impacts shall be paid prior to issuance of a building permit in accordance with Chapter 30.66A SCC.
- v. 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.

D. Prior to recording of the final plat:

- i. 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.

- ii. The final wetland mitigation plan shall be completely implemented.
- iii. The Planned Residential Development for *Noble Court* under File No. 99-109995 will need a formal revision.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 9) shall be implemented. All required 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.

EXAMINER'S CONDITIONS

- G. The wetland shall be developed in accordance with the proposed plan and subject in its development to the following conditions:
- i. Wetland mitigation should be started immediately.
 - ii. Wetland mitigation and drainage improvements should be completed prior to issuance of any building permit for structures.
 - iii. The three year monitoring requirement should be amended to include the downstream conditions to insure that the project has no negative impacts on the stream. Eastlake Park Homeowners Association shall be provided with the results of each monitoring evaluation.

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.

7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The existing PRD on this property is hereby REVOKED which covers approximately .5 acres. The request for a REZONE from PRD-9600 to R-7200 is hereby APPROVED, along with a 32 lot SUBDIVISION on 5.76 acres utilizing lot size averaging and SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 12th day of September, 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 **September 22, 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 26, 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: David Radabaugh/Patrick McGraner

<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>
