

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: September 28, 2005

PLAT/PROJECT NAME: *FAIRFIELD*

APPLICANT/
LANDOWNER: The McNaughton Group

FILE NO.: 04 118901

TYPE OF REQUEST: A 25-lot Planned Residential Development subdivision on 4.54 acres with a REZONE from Residential-9600 (R-9600) to Residential-7200 (R-7200)

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located at 4628-180th Street SE, Bothell, WA¹

ACREAGE: 4.54 acres

NUMBER OF LOTS: 25

AVERAGE LOT SIZE: 4,486 square feet

MINIMUM LOT SIZE: 3,485 square feet

DENSITY: 5.5 du/ac (gross)
7.3 du/ac (net)

OPEN SPACE: 15,044 square feet

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Mill Creek East UGA Plan
Subarea Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water: Silver Lake Water District

¹ Address corrected (9/30/05)

Sewage: Silver Lake Water District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approve subject to conditions

Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on October 14, 2004. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on September 7, 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 19, 20 and 21)

A SEPA determination was made on July 28, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on September 14, 2005, the 103rd 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 14, 2005 at 9:00 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. Brian Holtzclaw appeared on behalf of the applicant and responding to a letter of concern, indicated that they do have tree retention here. There will be 16 trees placed in one area, and 16 in another.

He stated that he agrees with all of the PDS recommended conditions, except D.ix., with regard to the pipeline easement as shown in Exhibit 37 and he stated that they are not part of the existing pipeline easement.

3. Ms. Monica McLaughlin, PDS, stated that the Olympic Pipeline Company wants to review any plans which are submitted and this is a double safety feature.

4. Mr. Andrew Smith, DPW, also appeared.

5. No one appeared in opposition to the request and Mr. Holtzclaw stated that they are fencing the property off to provide protection.

The hearing concluded at 9:17 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. One letter was received in opposition to the request and the applicant responded to the issue and indicated that they would be leaving trees. No one appeared in opposition.
4. The request is for a rezone of 4.5 acre site from R-9600 to R-7200 and for preliminary plat approval for a 25 lot subdivision PRD. He stated that the lots will be developed with single family homes. One existing family residence is to be demolished.
5. An Olympic Pipeline easement runs through the eastern 25 feet of the power parcel and a power line corridor lies immediately to the east, but off site from the pipeline easement. To the north, east, west and south of the property the zoning is R-9600 containing a single-family residence and power lines, the rest being vacant.
6. The applicant proposes to retain 16 existing mature trees with the required 15 foot wide perimeter buffers at the south and west sides of the property. The southwest corner of the site already contains 16 other native trees on a steep slope tract which will be preserved and established as a Native Growth Protection Area (NGPA). The PRD Ordinance requires the planting of new trees in the perimeter buffers and along street frontages and new trees will be planted in the open space tracts.
7. A high pressured gas line/easement runs north and south through the eastern 25 feet of the parcel and the applicant has revised the site plan to comply with the request that the houses be constructed no closer than 25 feet from the easement.
8. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$918.00 for each new single-family home.
9. 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 36)
10. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

11. It has been determined that there are no wetlands or streams in the area. However, there is a critical slope of over 33% of the southwest corner of the property which will be preserved from development and established as a NGPA pursuant to Chapter 30.62 SCC.
12. Rainwater runoff will be collected and transported via catch basins and pipes to an underground detention vault at the northwest corner of the property. This water will be released at a controlled rate into a storm filter to provide water quality prior to release into an existing ditch at 180th Street SE. 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).
13. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. The District recommends that any existing septic systems be abandoned or removed and existing wells be decommissioned.
14. Public water and sewer service will be available for this development as well as electrical power.
15. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) 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. 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.
16. The PDS staff has analyzed the effect of the PRD development on pages 8-11 of the staff report. (Exhibit 36) This analysis is correct and hereby adopted by the Examiner.
17. 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.
18. 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.

19. The proposal has been evaluated by PDS for compliance with the Planned Residential Development provisions of Chapter 30.42B SCC. This proposal is consistent with these provisions.

20. 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.
21. The aerial photograph (Exhibit 8) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
22. 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. However, one minor change has been made to Condition D.ix.
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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request will allow for the development of single-family homes which is consistent with this area, while at the same time preserving its open space slope and providing for the retention and replacement of over 32 trees.
6. The Examiner has considered the request to delete Condition D.ix. However, because of past problems, injuries resulting from the buried gas line, the Examiner believes that it's in the best interest of all parties, including the public safety or for people who are living there, may not realize there exists a gas pipeline, that some type of warning be provided to them. In this regard Condition D.ix. is left with the additional wording that prior to any construction of any kind being allowed within the 25 foot area, permission must first be obtained from the Olympic Pipeline Co.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 14) received by PDS on June 3, 2005, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Preliminary Plat/PRD Site Plan received by PDS on June 3, 2005 (Exhibit 14), Conceptual Building Elevations received by PDS on October 14, 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. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of 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. 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. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
 - ii. 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 Exhibits 16A-D and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iii. 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.
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition B., above.
- D. 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:
\$2,076.31 per lot for mitigation of impacts on county roads paid to the county,
\$72.72 per lot for Transportation Demand Management (TDM) paid to the County,
\$278.88 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.

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. Ten feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on the south side of 180th Street SE on the final recorded plat [SCC 26B.55.060]. Improvement to 180th Street SE has been identified as an

impact fee cost basis project in the Transportation Needs Report. Credit for right-of-way for 180th Street SE may be applied toward the project's road impact fee.

- iii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-118901.
- iv. "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."
- v. 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."
- vi. "The dwelling units within this development are subject to park impact fees in the amount of \$918 per newly approved dwelling unit, as mitigation for impacts to the North Creek community 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 October 14, 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."
- vii. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore 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 one existing lot. Lot 1 shall receive credit."
- viii. The proposed houses on Lots 4-14 shall be set back a minimum of 25 feet from the western edge of the Olympic Pipeline easement.
- ix. No construction of any kind, including installation of fencing, is allowed within the 25 foot wide Olympic Pipeline Easement without the written approval of the Olympic Pipeline Company. Prior to any construction of any kind being allowed within the 25 foot area, permission must first be obtained from the Olympic Pipeline Company.

E. Prior to recording of the final plat:

- i. Urban frontage improvements including 23 feet of pavement shall be constructed along the parcel's frontage on 180th Street SE to the specifications of the DPW [SCC 30.66B.410]. Improvements to 180th Street SE have been identified as an impact fee cost basis project in the Transportation Needs Report. Credit for improvements to 180th Street SE may be applied toward the project's road impact fee.

- ii. Pedestrian Facilities shall be constructed to the specifications of the DPW along 43rd Drive SE [EDDS].
- iii. Pedestrian facilities shall be constructed to the specifications of the DPW from the subject plat on 180th Street SE to the bus stop located at the intersection of 46th Avenue SE and 180th Street SE [RCW 58.17.110]. Improvement to 180th Street SE has been identified as an impact fee cost basis project in the Transportation Needs Report. Credit for improvements to 180th Street SE may be applied toward the project's road impact fee.
- iv. Covenants and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of commonly owned tracts 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.
- v. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- vi. 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).
- vii. 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.

F. 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.

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

DECISION:

The requests for a REZONE from R-9600 to R-7200, along with the approval of a 25-lot PRD subdivision are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 28th 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 **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 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 **October 12, 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: 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>
