

**DECISION of the SNOHOMISH COUNTY
DEPUTY HEARING EXAMINER**

DATE OF DECISION: August 3, 2005

PLAT/PROJECT NAME: Appletree, Division 6

APPLICANT/
LANDOWNER: Gordon P. Reykdal

FILE NO.: 04 121459

TYPE OF REQUEST: Preliminary Plat for a 17-lot subdivision utilizing lot size averaging provisions, a Rezone from Residential-9,600 (R-9,600) to Residential-7,200 (R-7,200) on 5.09 acres.

DECISION (SUMMARY): The plat and rezone are **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 4520 141st Street SE approximately one-half mile southwest of the 128th Street SE (SR-96)/Seattle Hill Road intersection, on the east side of Seattle Hill Road at the east end of 141st Street SE.

ACREAGE: 5.5 acres

NUMBER OF LOTS: 17

AVERAGE LOT SIZE: 10,825 square feet

MINIMUM LOT SIZE: 5,847 square feet

DENSITY: 3.09 du/ac (gross)
4.25 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

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

Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 22, 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 15, 16 and 17)

A SEPA determination was made on March 7, 2005. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on July 19, 2005, the 124th 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 July 19, 2005 at 10:03 a.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, Gordon P. Reykdal, was represented by Laurey Tobiason of Tobiason & Company, Inc. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services and by Mark Brown of the Department of Public Works.
3. During the public hearing, vicinity residents submitted a petition dated May 24, 2004 (Exhibit 34) opposing the opening of 141st Street S.E. as a condition upon the approval of this 17 single-family plat of Appletree Division 6. The petition was signed by residents of 26 households from among which five persons testified; James Church, De Ann Crenshaw, Don Crenshaw, Pete Klotter and Rick Strauss. Of the 26 households represented on the petition, approximately one-half front on 141st Street S.E.: 12 of the 15 households on 141st Street S.E. signed the petition.
4. The hearing concluded at 10:56 a.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, for a full and complete record, electronic recordings of the hearing are 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. Except as noted below, the PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. 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.
4. The request is for a rezone of 5.5 acres from R-9,600 to R-7,200 in order to construct a 17-lot subdivision using lot size averaging. Average weekday vehicle trips are 153, with 12 being a.m. peak hour trips and 16 being p.m. peak hour trips.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. The 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, the DPW has determined that the development is concurrent. Based on the evidence of record, the Examiner concurs fully with one exception: the Examiner finds as fact that the lack of sidewalks along existing 141st Avenue S.E. precludes opening that Avenue as a through street until sidewalks are provided. (See Findings 6 -10 below.)
6. One of the above-mentioned conditions recommended upon approval is Condition C, which requires, *inter alia*, right-of-way dedication linking 141st Street S.E. and 46th Avenue S.E. The result would be to convert the dead-end spur of 141st Street S.E. east of Seattle Hill Road into a through street. As noted under "Public Hearing" above herein, vicinity residents oppose that conversion to a through street. They point out that because 141st Street S.E. has been a dead end street for 20 years, no sidewalks have been installed along it. The only vehicular traffic that has ever traversed it is that of the 15 lots in Thomas Lake Estates. Thus, at approximately 10 trips per household, daily volume on 141st Street S.E. is now 150 trips. Its right-of-way width is 60 feet: at least eight feet wider than the proposed extension of it into Division 6. The lots comprising Thomas Lake Estates are huge compared to lot sizes typical of Appletree's various Divisions. Homes are commensurately large. The elegance of the homes is accented by extensive landscaping. Touches of pride of ownership are seen, such as the unpainted, 1929 Essex automobile body as a landscape feature in repose under mature trees. As a result of the combination of traits found as fact immediately above, the neighborhood has a distinct character. Such character is related to market value. The residents of the neighborhood strongly feel the making of 141st Street S.E. a through street will degrade that long-established character. They also feel the added traffic will threaten children and adults walking or bicycling there because there are no sidewalks.

7. Mark Brown, Engineer II with the Department of Public Works, testifies the Engineering Design and Development Standards (EDDS) require that 141st Street S.E. be made a through street in order to provide a second access for Division 6. He cites EDDS Section 1.04, paragraph TR1.C and Section 3.01. He argues that Appletree Division 3 alone to the south might exceed allowed volumes without the second traffic connection. He points out that the subject site is in the Urban Growth Area required by the Growth Management Act (GMA) for residential density commensurate with the zoning and plat proposed in this application. He believes from his years of experience that the large lots in Thomas Lake Estates will eventually be developed at higher density also even if not by the present owners. He believes most drivers will not choose 141st Street S.E. as a “cut-through.”
8. As noted, 141st Street S.E. now carries roughly 150 average weekday daily trips. From the aerial photograph of record (Exhibit 11) and from testimony at the public hearing, one counts 167 residential lots (including Divisions 6 and 7) as potential users of 141st Street S.E. if opened as a through connection to Seattle Hill Road. (Those homes in Appletree’s other Divisions built at least eight years ago (mid-1997) have not had access to Seattle Hill Road via 141st Street S.E.) The 167 residences generate approximately 1,670 daily trips. The Gibson traffic report in this record (Exhibit 7) calculates that 60 percent of all vicinity traffic is bound to and from the north on Seattle Hill Road. Sixty percent of 1,670 daily trips is 1,002 trips.
9. A key issue is how many of those trips will be on 141st Street S.E. That may depend upon the level of service at the intersection of Seattle Hill Road and 144th Street S.E. If that intersection’s level of service declines as growth continues in the vicinity, most of the 1,002 northbound drivers may indeed find the new through street the preferred route to place them as far north as possible before continuing their northward travel via busy Seattle Hill Road. Further, they will tend to prefer the most westerly segment of that route through Thomas Lake Estates because it is exceptionally wide, arrow straight, and with fewer curb cuts due to the larger lots: If so, 141st Street S.E. will be carrying approximately 1,000 trips a day: nearly seven times the 150 trips carried daily now but still without sidewalks.
10. Much, but not all, of the new through traffic will be generated by the various Divisions of Appletree. However, whether Appletree will generate so high a percentage of the total as to be required to fund offsite sidewalks along 141st Street S.E. is unanswered by this record. Sidewalks are required along the internal plat streets. The rational nexus required before an applicant can be required to fund such offsite improvements cannot be presumed. However, students of Everett School District No. 2 will be walking to bus waiting areas along 141st Street S.E. and 46th Avenue S.E. (Exhibit 26). RCW 58.17 requires safe walking routes from them. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. The record is silent as to whether those mitigation requirements include any funds for sidewalks on 141st Street S.E. between the proposed plat and Seattle Hill Road.
11. Wetlands lie in the eastern portion of the property, mostly within the pipeline and power easements. The wetland will be protected by placement within a Native Growth Protection Area tract. A minimum 25-foot buffer will be partially located within the NGPA on Lots 10 through 13. The applicant proposes to fill 626 square feet of the wetland and, in compensation, will enhance 1,883 square feet of existing buffer and add 1,849 square feet of buffer along the southern edge of the wetland.
12. 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. Public water and sewer service and electrical power will be available for this development.
14. 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 Mill Creek East 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.
15. 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.
16. 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 (as conditioned herein) safe walking conditions for students.
17. 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.

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. 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.
20. 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 except to add a condition requiring that sidewalks must exist along both sides of 141st Street S.E. to Seattle Hill Road before that street is opened as a through street.
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 conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.
6. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The revised preliminary plat received by the Department of Planning and Development Services on April 11, 2005 (Exhibit 14) 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 Wetland Mitigation Plan* for Apple Tree Division 6, prepared by Wetland Resources, Inc. and dated August 6, 2004 (Exhibit 6) shall be submitted for review and approval during the construction review phase of this project.

- C. The following additional restrictions 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 Everett School District No. 2 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 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:

\$2,035.60 per lot for mitigation of impacts on county roads paid to the County,
 \$71.29 per lot for transportation demand management paid to the County,
 \$351.53 per lot for mitigation of impacts on the City of Mill Creek streets paid to the City.

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. Fifty-two feet of right-of-way shall be dedicated to Snohomish County, extending 141st Street SE on the final recorded plat. (SCC 30.66B.510, SCC 30.66B.520).
 - iv. Forty-eight feet of right-of-way shall be dedicated to Snohomish County, extending 46th Avenue SE on the final recorded plat. (SCC 30.66B.510, SCC 30.66B.520)
 - v. Until sidewalks have been installed on both sides of 141st Street S.E. from the subject plat boundary to Seattle Hill Road, no through traffic shall be permitted on 141st Street S.E. The applicant is required to pay only its proportionate share of the cost of those sidewalks.
 - vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”
- D. Prior to recording of the final plat:
- i. The developer shall pay the County \$918.00 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.
 - ii. Urban frontage improvements shall be constructed along the parcel’s frontage on 46th Avenue SE and 141st Street SE to the specifications of the DPW. (SCC 30.66B.410)

- iii. 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 plattor 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.

- iv. The final wetland mitigation plan shall be completely implemented.
- v. The applicant shall provide documentation that Olympic Pipeline Company's easement has been relocated to align with their easement in *Appletree Division 3*.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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 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 17-lot subdivision utilizing lot size averaging provisions and for a rezone from Residential-9,600 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 3rd day of August, 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 **AUGUST 15, 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 **AUGUST 17, 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: Paul MacCready
Department of Public Works: Andrew Smith

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.
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