

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: November 30, 2005

PLAT/PROJECT NAME: *ABBI CREST*

APPLICANT/
LANDOWNER: David Alan Development, LLC

FILE NO.: 04 121461

TYPE OF REQUEST: REZONE of a 2.28 acre site from Residential-9600 (R-9600) and Residential-8400 (R-8400) to Residential-7200 (R-7200) and approval for a 10-lot SUBDIVISION utilizing the lot size averaging provisions of SCC 30.23.210

DECISION (SUMMARY): Requests approved subject to preconditions and conditions (subject to resolution of legal issues)

BASIC INFORMATION

GENERAL LOCATION: The property is located at 13617 48th Drive SE, Snohomish

ACREAGE: 2.28 acres

NUMBER OF LOTS: 10

AVERAGE LOT SIZE: 7,191 square feet

MINIMUM LOT SIZE: 4,895 square feet

DENSITY: 4.39 du/ac (gross)
6.02 du/ac (net)

OPEN SPACE: 7,119 square feet

ZONING: CURRENT: R-8400 & R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: North Creek
Subarea Plan Designation: Suburban (1-4 du/ac)

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Sewer District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 1

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 April 5, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on November 10, 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 September 15, 2005. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on November 16, 2005, the 98th 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 November 16, 2005 at 9:04 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. Laurey Tobiason appeared on behalf of the applicant and stated that this is a rezone request which is supported by the comprehensive plan. He indicated that he had no objection to the conditions. He stated that his design followed Exhibit C, in a letter known as Exhibit 39.
3. Ms. Monica McLaughlin, PDS and Mr. Mark Brown, DPW appeared on behalf of the county staff.
4. Mr. David Johnson, an attorney appeared and stated that he agrees with the legal theory that the plat should not be approved until the legal issues have been resolved. He stated that he is not against the subdivision in general, and he does not want to stop it, but they did not agree to the lots as presently drawn up. He requested that this be put in as a condition.

5. No one else appeared in opposition to the request.

The hearing concluded at 9:24 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. Letters of concern were received with one concern being raised as to the placement of traffic controls in the area and the other being raised as to the location of the lots as they were drawn.
4. The request is for a rezone of a 2.2 acre site from R-9600 and R-8400 to R-7200, along with approval of a 10-lot subdivision utilizing the lot size averaging provisions of the county code. Two existing single-family residences will be retained and the new lots developed with single-family homes.
5. Single-family homes exist to the west, east and south of the property and are zoned R-9600.
6. At the outset, issues have been raised with the county staff and at the hearing that there is a legal dispute with regard to an agreement as to the number of lots and their locations. The Examiner indicated that until these legal issues were raised are resolved, the subdivision could not be approved pursuant to an earlier *Bellevue* case.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 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 3-5, Exhibit 38)
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
10. A site investigation found no wetlands or other critical areas as defined by Snohomish County Critical Area Regulations Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations, on or within 100 feet of the property.

11. Rainwater run-off is to be collected and transported via catch basins and pipes to an above ground wet pond located at the southeastern portion of the property where it will be released at a controlled rate. 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).
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
13. Public water and sewer service will be available for this development as well as electrical power.
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 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.
15. 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.
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. 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.
18. 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.
19. The aerial photograph (Exhibit 9) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
20. Concern was expressed by one property owner in a letter concerning the placing of traffic calming devices, and other concerns as to the traffic impact was expressed in two letters. The DPW has reviewed these issues generally, and has approved the request. However, those persons expressing concern should

contact directly the DPW traffic department to see if any devices can be placed which will lessen those impacts further.

21. 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 reports, however, the Examiner has included a condition (see 6.E. on page 7), regarding legal issues which must be resolved before preliminary approval of the plat.
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 would allow for the development of single-family homes which would fit in with the neighborhood as it is developed and therefore the request could generally be approved.
6. However, there exists a legal dispute between the owner of property presently there, and the proposed development. Apparently nine lots were originally proposed and the applicant has added one more lot which infringes on the property of the other parties. The courts have ruled that if there is a legal dispute as to the lots in a subdivision, that subdivision cannot be approved until those issues have been resolved – which is the case here.

Therefore, the Examiner has imposed a condition that the preliminary subdivision not be approved until the legal issues have been resolved as evidenced by letter from the parties raising the issue. (See Case of *Halvorson v. Bellevue 41 Wn. App 457, 704 P2d 1232 (1985)*)

7. The request should be approved subject to compliance by the applicant with the following Preconditions and Conditions:

PRECONDITION:

1. Per SCC 30.41A.310, the owner(s) shall file with the Hearing Examiner's office a notarized written statement in a form provided by the county, requesting withdrawal of the previous Preliminary Plat of Abbi Crest (file # 02-106907) and acknowledging the effects of such withdrawal.

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on July 13, 2005 (Exhibit 12), 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. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 15.

- 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 Everett 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 two existing parcels. Lots 1 and 8, containing the existing houses, shall receive credit.”

 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence (SFR):
 - \$2,054.68 per lot for mitigation of impacts on county roads paid to the county,

 - \$284.57 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 single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- D. Prior to recording of the final plat:
 - i. A curb cut in the new public road that lines up with the garage shall be provided for lot 24 within the subdivision of Crescent Court, PFN 98 116959 and that the existing curb cut to this lot on Kattenhorn Road shall be removed and replaced with a vertical curb.
 - ii. The features on the approved TDM plan shall be constructed/installed.
 - iii. Urban frontage improvements shall be constructed along the parcel’s frontage on Kattenhorn Road to the specifications of the DPW.
 - iv. The detention pond landscaping shall be installed and inspected.
 - v. “The dwelling units within this development are subject to park impact fees in the amount of \$1244.49 per single family unit as mitigation for impacts to the Nakeeta Beach parks service 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 April 5, 2010 (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.”

- E. Examiner Condition

- i. There shall be no final approval of the preliminary plat or issuance of development permits until the legal issues regarding the lots have been resolved.

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.

8. 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 REZONE from R-9600 and R-8400 to R-7200, along with approval of a 10-lot PRELIMINARY PLAT utilizing lot size averaging are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 7, above.

Decision issued this 30th day of November, 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 **December 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 **December 14, 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: Mark Brown

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than November 30, 2006.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of

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Certified by:

(Name)

(Title)
