

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
) **FILE NO. 05 100812**
SNOHOMISH COUNTY DEPARTMENT)
OF PUBLIC WORKS)
)
Conditional Use Permit (CUP), Height Variance and)
Landscape Modification for the future construction)
of the Public Works Cathcart Maintenance Center)

DATE OF DECISION: August 24, 2005

DECISION (SUMMARY): The conditional use, height variance and landscape modification are each **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

LOCATION: The subject property is located at 14528 SE Hwy 9, Snohomish, Washington

ACREAGE: 63 acres

ZONING: Rural Conservation (RC)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Other land uses
Pre-GMA Subarea Plan: Cathcart - Maltby - Clearview
Subarea Plan Designation: Public Facilities / Possible Public Facilities

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on January 26, 2005. (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 21, 22 and 23)

A SEPA determination was made on May 3, 2005. No appeal was filed.

The Examiner held an open record hearing on August 9, 2005, the 143rd 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 9, 2005 at 2:04 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. The applicant, the Snohomish County Department of Public Works, was represented by Steve Dickson as presenter and by Andy Smith. Tom Barnett represented the Snohomish County Planning & Development Services Department.
3. Numerous neighboring property owners expressed concern about the proposal prior to the Examiner's open record hearing. A series of community meetings were held by the applicant to describe the proposal, to receive comments and to determine what, if any, response would be appropriate. Two vicinity residents attended the hearing and testified: Earl Goshorn of 14813 – 80th Drive SE in the MonteVista community and Scott Honaker of 14014 – 89th Avenue SE: immediately north of the subject facility. (See Findings of Fact for details.)
4. The hearing concluded at 2:38 p.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 OF FACT

Based on all of 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. 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein. The record copy shows scrivener's errors corrected during the hearing.
3. The request is for a conditional use permit to relocate the road maintenance facilities now at Paine Field and Snohomish onto the now-closed Cathcart landfill site. A traffic signal maintenance shop and a Sheriff's seized vehicle impound lot and indoor firing range would be located at the Cathcart site along with the following:
 - A new maintenance shop for County vehicles and heavy equipment;
 - Outdoor storage for Public Works trucks and heavy equipment;
 - New offices and crew facilities for Solid Waste and Road Maintenance personnel;
 - Outdoor storage yards for rock, sand, gravel and other construction materials;
 - A laboratory for testing road construction materials;
 - Storage area for public works records and documents;
 - A traffic signal maintenance shop;
 - A fueling facility;
 - A new access and intersection off Cathcart Way near 83rd Avenue SE and relocation of the existing access farther west;
 - Stormwater detention ponds;
 - Relocation of the Vactor waste facility; and
 - Landscaping where abutting private property and public right-of-way.
4. The primary purpose of the facility is to provide the facility base including shops and offices supporting the crews who maintain much of the 1,632 miles of roads and 191 bridges throughout Snohomish County. They also install traffic control devices such as signs and pavement striping, construct retaining walls, and respond to emergencies such as floods, accidents and spills.
5. The proposal includes a request for height variances of from two to six feet. The six-foot height variance is for the fleet building. Landscaping modifications are requested for the perimeter, parking areas and detention facility landscaping. In order to widen the road for the left-turn pockets at the entry to the site, the proposal also requests a deviation from the Engineering Design and Development Standards (EDDS) to eliminate the required five-foot planting strip on Cathcart Way.

6. Neighbor Earl Goshorn lives across Cathcart Way in MonteVista. He testifies that the noise of that street currently precludes speaking outdoors at normal conversational level further than 20 feet. He is especially concerned about the noise of large diesel trucks as they shift gears to gain or hold speed when climbing or when using the engine to brake moving downhill. He is concerned about left turns into the proposed facility, concerned about high speeds already at 50 – 60 miles per hour at the 81st Street intersection and concerned about the back up of traffic now stretching almost to 180th Street in peak hours.
7. Neighbor Scott Honaker and his wife live immediately north of the subject site and are concerned about any loss of vegetative screening, about light or glare, about noise of the gravel parking area, and about access via their existing “dog-leg” driveway to Highway 9.
8. Examination of the record concerning noise and traffic impacts leaves this Examiner convinced that noise impacts of the proposed facility are going to be moderate with the possible exception of the graveled parking lot above-mentioned. The final noise mitigation study by Jones & Stokes of April 2005 (Exhibit 19) is thorough in addressing concerns raised at the meetings held with the affected neighboring communities. It’s Figure 2-2 shows the rising elevations of contours from the parking area to the nearest homes, the use of the heated shops building as a sound barrier, and addition of six foot walls supplementing that buildings sound reduction. It’s Summary concludes:

“With application of the Mitigation Elements proposed above, noise generated by the PWCMC and received on neighboring properties would be lower then the existing background noise and would not be heard by occupants of those properties.”
9. The Examiner takes notice that if the permit is found to be creating noise at levels greater than anticipated by the evidence in this record, the continuing jurisdiction granted by SCC 30.71.027 could be invoked upon good cause shows to review the permit.
10. In all respects other than described above, all of the associated requests are found to meet their respective decisional criteria as described in the staff report.
11. The request will not generate impacts to the County’s park system or the school system.
12. 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.
13. 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).
14. 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.

15. 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.
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 should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS:

- A. The major modification to the conditional use permit for the closed Cathcart Landfill to allow the reduction in the conditional use's boundary shall have been approved (PDS file number 05-100636 LU).
- B. A record of the developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
- C. An overall site plan shall be provided showing the relocated Heated Shops Building, and the location of the facility to be temporarily relocated during construction, as described in Exhibit 44.

CONDITIONS:

- A. Exhibits 4A through 4I, and Exhibits 12A through 12P, shall be the official approved development plans for this project. Any discrepancy between the content of the official approved development plans and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plans is regulated by SCC 30.42C.110.
- B. The noise control measures cited in the "Supplemental Noise Study", Exhibit 42, shall be followed, including construction of the sound walls and/or sound absorbing materials in the Fleet Building.

Prior to issuance of building or grading permits:

- C. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor encumbering the critical areas/required buffers in a Native Growth Protection Area (NGPA). The recorded NGPA restrictive language shall state “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.
- D. A Final Critical Areas Mitigation Planting Plan shall be prepared and certified by the Department of Public Work’s Public Involvement and Environmental Group.
- E. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$304,704.00. This amount may be paid proportionately with each building permit.
- F. The applicant shall make a payment to Snohomish County for the Washington State Department of Transportation in the amount of \$27,452.00 for mitigation of traffic impacts to state highway projects. This amount may be paid proportionately with each building permit.

Prior to the issuance of any Certificate of Occupancy for the PWCMC:

- G. The features on the approved TDM plan shall be constructed and/or installed.
- H. The sound walls shall have been constructed.
- I. 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.
- J. The Final Critical Areas Mitigation Planting Plan shall be satisfactorily implemented.
- K. Nothing in the permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.
- L. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

5. Any conclusion in this report and 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 conditional use, height variance and landscape modification are hereby **CONDITIONALLY APPROVED**, subject to the **PRECONDITIONS** and **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 24th 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 **SEPTEMBER 6, 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 **SEPTEMBER 7, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett
Department of Public Works: Andy 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.

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 AUGUST 24, 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

_____.

Certified by:

(Name)

(Title)
