

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 25, 2006

PLAT/PROJECT NAME: *PORTER'S LANDING*

APPLICANT/
LANDOWNER: Phoenix Development, Inc.

FILE NO.: 05 100987-001

TYPE OF REQUEST: A 59-lot Planned Residential Development (PRD) subdivision on 10.6 acres, along with a rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200), and two concurrent boundary line adjustments

DECISION (SUMMARY): Requests APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at the southeast corner of the intersection of 35th Avenue SE and 228th Street SE, in Bothell

ACREAGE: 10.43 acres

NUMBER OF LOTS: 59

AVERAGE LOT SIZE: 4,247 square feet

MINIMUM LOT SIZE: 3,647 square feet

DENSITY: 5.7 du/ac (gross)
8.5 du/ac (net)

OPEN SPACE: 93,550 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: North Creek
Subarea Plan Designation: Rural (0.4-1 du/ac)

UTILITIES:

Water: Alderwood Water and Sewer District
Sewage: Alderwood Water and Sewer 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 August 19, 2005. (Exhibit 13)

The Hearing Examiner (Examiner) made a site familiarization visit on January 9, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 25A, 25B and 25C)

A SEPA determination was made on October 5, 2005. (Exhibit 24) No appeal was filed.

The Examiner held an open record hearing on January 10, 2006, the 160th 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 January 10, 2006 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. Todd Oberg, represented the applicant, and stated that this will be 59 lots with the main entrance off 35th and to the south to *Harvest Run*.
3. Ms. Mona Davis, Department of Planning and Development Services (PDS) and indicated that there were three minor corrections to pages 12 and 14 of the PDS staff report and referred to Exhibit 48.
4. Mr. Mark Brown, Department of Public Works (DPW), stated that the Woodcreek area was originally intended many years ago to be connected to this area when this area is developed.

5. Mr. Dave Phelps, who works for the City of Bothell appeared, and stated that the area is within the City and they require certain frontage improvements and are working with Phoenix Development to have this done.
6. Mr. Craig Cottingham appeared and stated that they are concerned that the streets be not used as a short cut through *Woodcreek* since the streets are small and there are no provisions for walking people and they are now being used as walkways and cars as well. He stated that *Woodcreek* was developed 30 years ago and the homes are situated specifically on ½ acre lots. He stated that any connections are not necessary for vehicles. However, it might be all right if they were not through streets, but it is not desirable as traffic access. He submitted Exhibits 55-57 and 59 which show the issues.
7. Ms. Sharon Roberts appeared and indicated that her main concern is the connection through the subdivisions and sees no real need for it.
8. Mr. Brown, responded and stated that the lots have development potential in *Woodcreek* and that there should be opportunities for traffic to go through.
9. Mr. Cottingham, referring to Exhibit 57, reiterated that the houses are placed on the lots to discourage development, but that it still doesn't solve the walking problem on safety.
10. Mr. Bob Vick indicated that they had discussed the removal of trees and would work that out with the neighbors.
11. Ms. Judy Fisher appeared and stated that there is no funding in place for the Bothell connector.
12. This matter was heard in conjunction with the next item on the agenda, which is *Harvest Run*. Information obtained with one, could be applied to the other.

The hearing concluded at 10:12 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. This 10.43 acre site is proposed for development as a formal subdivision for 59 single-family homes, with a boundary line adjustment reducing the use of the existing residences to the west of the site. The site is within an Urban Growth Area (UGA) and is adjacent to the City of Bothell limits on the west. The surrounding properties to the north and west are generally undeveloped or with single-family residences

on large lots. The property to the east is developed with a large lot subdivision known as *Woodcreek*. The property to the south is currently pending preliminary plat approval and is known as *Harvest Run*.

4. There have substantial interest of concern being focused on the proposed vehicular connection that will occur in their development as part of the new development of *Porter's Landing* and that of *Harvest Run* to the south. The *Woodcreek* neighbors have indicated that they would not be opposed to a non-motorized connection for pedestrian and vehicle traffic.
5. 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.
6. 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 3-7, Exhibit 48)
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. There are no critical areas, streams or wetlands found on or within 100 feet of the property.
9. All site runoff flows from east to west toward 35th Avenue SE. A stormwater detention vault will be constructed on the southwest corner of the site. 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)
10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Existing septic systems should be abandoned.
11. Public water and sewer service will be available for this development as well as electrical power.
12. 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.
13. 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.
14. 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.

15. The PDS staff has correctly analyzed the effect of the PRD under Chapter 30.42B SCC, which is found on pages 9-12 of the PDS staff report. (Exhibit 48). The staff report specifically provides for open space of 93,550 square feet, which meets the PRD requirements.
16. 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.
17. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
18. Subsequent to the hearing, additional information was submitted pursuant to the allowance of the record to be left open for a short time for this file as well as *Harvest Run*. While this file was not left open, because both matters were heard together, the Examiner has reviewed those letters which are part of the exhibits and finds nothing material that would change the information and evidence presented at the hearing.
19. It is the specific finding of the Examiner, with regard to the placing of the road into the *Woodcreek* subdivision, that this would create a serious safety hazard to those persons who have lived and resided in this subdivision for 30+ years, based upon what Snohomish County allowed and encouraged them to do. Now, having lived there and adjusted their lots, their streets and their roads and their lives, to this type of use, it would be premature to allow these more dense developments to access roads in this subdivision unless or until *Woodcreek* changes. Therefore, Snohomish County having encouraged that development, which now comes face-to-face with new developments, under new conditions, the county should not inflict upon the people of *Woodcreek* heavy traffic on roads that are not made for it, and still have a lot of pedestrian traffic.
20. While other issues were raised, the Examiner does not find them to be material such as to deny the proposed development in the absence of expert testimony in support thereof.
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. However, some changes

have been made to the conditions to preserve the safety of the existing neighborhoods and these changes are shown in the Examiner's Conditions.

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 proposed request would allow for the development and traffic circulation on 35th Avenue, thereby providing homes in this area of the county adjacent to the City of Bothell.
6. Limitations should be placed so that traffic does not go through the *Woodcreek* area, thereby protecting the health and safety of those persons who reside there. This is especially true where all circulation can be had without going through *Woodcreek*. However, some provision should be made for bikes and pedestrians and emergency access if and when needed, and this is reflected in a condition. If, at a later time, the *Woodcreek* plat changes, then, putting the road through can be looked at then, but not now.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on November 7, 2005 (Exhibit 22) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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. 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 Exhibit 23 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iii. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. 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.

- 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 Northshore School District No. 417 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 four existing parcel(s). Lot(s) 1 through 4 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:

\$1,681.14 per lot for mitigation of impacts on county roads paid to the county,

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.
 - iii. “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 open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, 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.”
 - iv. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
- D. Prior to recording of the final plat:
- i. The features on the approved TDM plan shall be constructed/installed.
 - ii. Urban frontage improvements shall be constructed along the parcel’s frontage on 228th St SE to the specifications of the DPW.
 - iii. 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.
- E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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.

The existing conditions shall remain except as follows:

EXAMINER'S CONDITIONS:

- A. 231st Street NE shall not be built beyond the boundary of this plat and shall not be used for any type of vehicular traffic. It may contain only a pass through for pedestrians and/or bicycles, with an emergency bar or chain that can only be used for emergency vehicle access when needed. It shall not be used for vehicle access unless or until there has been a complete change in the neighborhood of *Woodcreek*. Where there is a conflict of this condition with the site plan or other conditions herein, this condition shall control.
- B. The applicant has indicated that they would make some concessions to the property owner regarding cutting of trees and buffering. This was only done in discussion in front of the Examiner and in order that it might be more precise, the applicant shall submit to the Examiner within 10 days, with a copy to the adjacent neighbor, what it proposes to do in the way of buffering or of cutting or retaining trees.
- 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 a 59-lot Planned Residential Development subdivision, and two concurrent BOUNDARY LINE ADJUSTMENTS are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with all of the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 25th day of January, 2006.

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 **February 6, 2006**. 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 **February 8, 2006** 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: Mona Davis
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.