

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

In the Matter of the Application of)
)
PHOENIX DEVELOPMENT, INC.) **FILE NO. 05 100988**
)
Request of a 46-lot Planned Residential Development)
(PRD) subdivision of 7.89 acres)

DATE OF DECISION: February 8, 2006

PLAT/PROJECT NAME: *Muirfield*

DECISION (SUMMARY): The proposed 46-lot PRD subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located 1622 Seattle Hill Road, Bothell, Washington.

ACREAGE: 7.89 acres

NUMBER OF LOTS: 46

AVERAGE LOT SIZE: 3,952

MINIMUM LOT SIZE: 3,000

DENSITY: 5.8 du/ac (gross)
7.8 du/ac (net)

ZONING: Residential-7,200 (R-7,200) and Residential-9,600 (R-9,600)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6-12 du/ac)
Subarea Plan: Mill Creek
Subarea Plan Designation: Urban Medium Density Residential (6-12 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Everett No. 25

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 October 17, 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 24, 25 and 26)

A SEPA determination was made on December 5, 2006. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on January 24, 2006, the 46th 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 24, 2006 at 3:04 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Phoenix Development, Inc. was represented by Steven Michael Smith of Lovell-Sauerland & Associates, 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. Written concerns about the proposed development were received pre-hearing from Eric and Sandra Bosley (Exhibit 29B) and Jan and Kent Coleman (Exhibit 29A). The applicant's project manager, Loree Quade, responded to the Bosleys point-by-point in writing (Exhibit 29C). The Bosleys did not attend the hearing. Jan Coleman testified at the hearing and asked several questions of the applicant, particularly focused on the issue of landscape buffering. She and her husband invested approximately \$10,000 in landscaping and architect fees and want to be sure that investment is not lost when the proposal is built. She expressed substantial satisfaction with the responses she received during the hearing concerning landscaping, storm drainage and steep slopes.
4. The City of Mill Creek by letter of November 3, 2005 (Exhibit 34), urges County consistency with Mill Creek's Comprehensive Plan's Streetscape Element and development standards for neighborhood design, roadway buffers and pedestrian walkway, including a meandering sidewalk. The Examiner called for discussion of the City's concerns and both the applicant and the County staff responded at the Hearing. The Examiner noted that the interlocal agreement between the two jurisdictions does not mandate the sought-after consistency.

The hearing concluded at 3:51 p.m.

NOTE: For a complete record, an electronic recording of this hearing is 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 applicant, Phoenix Development, Inc. proposes to construct a 46-lot PRD subdivision on approximately eight acres zoned R-7,200 and -9,600 addressed 1622 Seattle Hill Road. The proposal will generate 391 average daily vehicular trips. Of those, 31 will be a.m. peak-hour trips and 41 will be p.m. peak-hour trips.
3. 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 report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
4. The proposed plat will result in filling a Category 3 wetland of 2,048 square feet, for which mitigation will be to designate an easement with Tract 998 as a Native Growth Protection Area.
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.
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. 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).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The property is designated Urban Medium Density Residential (UMDR 6-12 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 Urban Medium Density Residential designation covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre.
12. The subject site is within the Urban Growth Area (UGA) and currently zoned R-7,200. Tract 994, a proposed public walkway, is zoned R-9,600. The plat of Misty Meadows #7 is located directly east and is zoned R-9,600. Twin Valley Park Division 3, a PRD, lies to the south; and Twin Valley Park, also a PRD, abuts the subject property along the southeast corner. Both adjoining PRD's are zoned PRD-9,600. Undeveloped property, zoned LDMR, is located along the west boundary and is owned by the Everett School District. Seattle Hill Road borders the northern boundary of the proposed subdivision. A large single-family residence sits on the property across the street.
13. 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.
14. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

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 (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 should be approved subject to compliance by the applicant with the following conditions.

CONDITIONS

- A. The PRD official site plan/preliminary plat received by the Department of Planning and Development Services on November 18, 2005 (Exhibit 20) 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 the Department of Planning and Development. The plan shall be prepared in general conformance with Exhibits 22 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 the Department of Planning and Development Services. 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 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 six existing parcels. Lots 1 through 6 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) or twice the amount shown for a duplex:
 - \$1,920.68 per lot for mitigation of impacts on county roads paid to the County.
 - \$526.60 per lot for mitigation of impacts on the City of Mill Creek streets paid to the City. Proof of payment shall be provided.
 - \$54.22 per lot for mitigation of impacts on state highways 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 lots therein. Once building permits have been issued all mitigation payments shall be deemed paid by the Department of Planning and Development Services.
- 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 Seattle Hill Road to the specifications of the Department of Public Works.
- iii. A bond or other guarantee of performance shall have been submitted to and accepted by the Department of Planning and Development Services 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 recommended 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.

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 request for a 46-lot Planned Residential Development Subdivision on 7.89 acres is **CONDITIONALLY APPROVED**, subject to compliance with the CONDITIONS set forth in Conclusion No. 4, above.

Decision issued this 8th day of February, 2006.

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 **FEBRUARY 21, 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 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 **FEBRUARY 22, 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 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: 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.
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