

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

DATE OF DECISION: August 18, 2005

PLAT/PROJECT NAME: Cedar Grove Estates

APPLICANT/  
LANDOWNER: Adair Enterprises, LLC

FILE NO.: 05 101032

TYPE OF REQUEST: 28-lot Plat and Planned Residential Development (PRD) of a 5.11 acre parcel in a Residential-9,600 (R-9,600) zone.

DECISION (SUMMARY): Approved subject to conditions

## **BASIC INFORMATION**

GENERAL LOCATION: 17032 35<sup>th</sup> Avenue SE, Bothell, Washington

ACREAGE: 5.11 acres

NUMBER OF LOTS: 28

AVERAGE LOT SIZE: 4,646 square feet

MINIMUM LOT SIZE: 3,808 square feet

DENSITY: 5.48 du/ac (gross)  
9.40 du/ac (net)

OPEN SPACE: Part 1: 20.4 percent gross site area  
Part 2: 47.5 percent  
Part 3: 40.5 percent

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)

Subarea Plan: North Creek

Subarea Plan Designation: Rural (.4 – 1 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: 17

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 February 2, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on July 21, 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 15, 16 and 17)

A SEPA determination was made on May 21, 2005. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on August 3, 2005, the 88<sup>th</sup> 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 3, 2005 at 1:00 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. Mr. Merle Ash, representing the applicant, appeared and stated he agrees with the PDS staff report. However, he stated it should not be their responsibility to remove any temporary cul-de-sac.
3. Mr. David Radabaugh of PDS appeared and stated that Condition B.iv. could be removed and is now not necessary.

He submitted Exhibit 26 regarding Condition D.v. and to eliminate Condition C.iii. as it is not necessary.

He submitted Exhibit 27, which is a Supplemental Staff Report, dated July 29, 2005.

4. No one appeared in opposition to the request.

The hearing concluded at 1:33 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:**

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. No letters of concern were submitted and no opposition to this request.
4. The request is for approval of a 28-lot planned residential development subdivision of approximately 5.1 acres. The property is currently developed with a single-family residence in a R-9,600 zone.

The property to the north is zoned R-9,600 and to the west R-7,200 and to the east and south are additional plats of *Brooside Estates* with R-7,200. Access will be provided by a new public road, 168<sup>th</sup> Place SE, to be dedicated with the recording of the plat of *Brookside Estates*.

5. 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.
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 2-4, Exhibit 27 and Pages 3-6, Exhibit 24)
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 wetlands within 100 feet of this site.
9. Stormwater from lots and roads in the plat will be directed to a stormwater detention pond in Tract 999. 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. It is recommended that existing septic systems 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-9,600 zone which is the case here.
13. The proposal is to develop the property pursuant to Planned Residential Development under Chapter 30.42B SCC. The PDS staff analysis in this development provides that this may be done and is set forth in detail on Pages 8-11 of the PDS staff report. (Exhibit 24) Specifically, it also provides that the total open space is met with 45,374 square feet, a little over 20 percent of the gross site area which is 222,633 square feet.
14. 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.
15. The proposal has been evaluated by PDS for compliance with the Planned Residential Development provisions of Chapter 30.42B SCC. This proposal is consistent with these provisions.
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. 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 Department of Planning and Development Services 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. A supplemental staff report with recommendations for conditions was submitted (Exhibit 27).
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 will allow for the development of this attractive area for single-family residences which is consistent with development that is occurring in this area.

5. 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 June 24, 2005 (Exhibit 19) 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 Services. The plan shall be prepared in general conformance with Exhibit(s) 19H and 19I 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 the Department of Planning and Development Services 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.
  - iv. A public easement shall be created for the school walkway across Tracts 998 and 997. The easement shall use the County approved language and be recorded with the County Auditor.
  - v. A plan for removal of the temporary cul-de-sacs and construction of frontage improvements along 168<sup>th</sup> Place SE and 33<sup>rd</sup> Drive SE in the Plat of Brookside Estates shall have been approved by the Department of Public Works.
- 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 1 existing parcel. Lot 1 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:

\$1,981.30 per lot for mitigation of impacts on county roads paid to the County,  
\$537.84 per lot for mitigation of impacts on the City of Mill Creek streets paid to the City.  
\$332.22 per lot for impacts on the 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 or the lot(s) 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 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.
- v. The following note shall be placed on the face of the final plat:

Lots 4, 8, 9, 12, 13, 16, 24 and 27 shall take direct access onto 168<sup>th</sup> Place SE.

D. Prior to recording of the final plat:

- i. The temporary cul-de-sacs located at the ends of 168<sup>th</sup> Place SE and 33<sup>rd</sup> Drive SE in the Plat of Brookside Estates shall be removed and the lawns reconstructed on the lots at these locations or some modification as approved by the Department of Public Works. The frontage shall be reconstructed to urban standards and shall match the existing improvements along both sides of 168<sup>th</sup> Place SE and 33<sup>rd</sup> Drive SE [EDDS].
- ii. Pedestrian Facilities shall be constructed to the specifications of the Department of Public Works throughout the development [EDDS].
- 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.
- iv. The plat of Brookside Estates (PFN 03-109049) shall have been recorded.
- v. The existing septic drainfields shall be abandoned in conformance with the requirements of the Snohomish Health District.

- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 9I) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
  - ii. Prior to recording of the plat for simultaneously with recording the plat easements under Snohomish County Auditor's File numbers 8810200017, 8806210320, and 9801040363 shall be extinguished.
- F. 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.

6. 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 28-lot plat and Planned Residential subdivision is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 5, above.

Decision issued this 18<sup>th</sup> day of August, 2005.

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Robert J. Backstein, Hearing Examiner

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **AUGUST 29, 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 **SEPTEMBER 1, 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.

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Staff Distribution:

Department of Planning and Development Services: David Radabaugh  
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.