

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 05 102005 LU
BILL FORTUNATO PACLAND, INC.)	
)	
Rezone from Freeway Service (FS) to Community)	
Business (CB) for subsequent inclusion in the Martha)	
Lake Gateway Center property)	

DATE OF DECISION: September 7, 2006

PLAT/PROJECT NAME: *Martha Lake Retail*

DECISION (SUMMARY): The application for rezone from FS to CB and binding site plan subdivision for 8,00 square foot retail building is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 1418 164th Street SW, Lynnwood, Washington.

ACREAGE: .74 acre

ZONING: CURRENT: Planned Community Business
 ZONING AT TIME OF APPLICATION COMPLETENESS: Freeway Service
 PROPOSED: Community Business

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Urban Commercial
Subarea Plan:	North Creek
Subarea Plan Designation:	Freeway Service

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval

Public Works: No recommendations at this time

INTRODUCTION

The applicant filed the Master Application on February 25, 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 June 28, 2006. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on August 3, 2006, the 73rd 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, 2006 and was continued to August 24, 2006 beginning at 4:02 p.m.

1. The Examiner announced that he has read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Bill Fortunato of Pacland, Inc., appeared and participated in the hearing along with Jenelle Taflin. Snohomish County was represented by Scott Whitcutt of the Department of Planning and Development Services
3. The hearing concluded at 4:31 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 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). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone of .74 acre from FS to CB. No critical area (steep slope, wetland, or stream) is on or near the site.
4. The applicant, Bill Fortunato, testifies that the project intends to integrate a small lot on the south side of the Martha Lake Gateway Center into that Center, which surrounds the subject site. The Center was recently rezoned to Community Business. The current Freeway Service zoning of the subject site is inconsistent with the CB zoning that surrounds it: i.e., retail uses are not allowed in the FS zone.
5. No member of the general public participated in this matter by document or testimony.
6. The Hearing Examiner can condition or deny a rezone if there is substantial evidence in the record of the need to do so in the interest of the public health, safety and welfare. However, none of the assertions listed above achieves that evidentiary level in this record at this stage.
7. 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.

8. There are no mitigation requirements required for parks, schools or roads and the DPW has no comments or objections but will provide its input during the short plat approval process.
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water, sewer service and electrical power will be available for this development.

11. The property is designated Freeway Service on the pre-GMA North Creek Subarea Plan. In resolving the GPP text discussion regarding the structural relationship of the subarea plans to the GPP, previous hearing examiner decisions have held that the definitive statement in the GMACP adoption ordinance that "the existing subarea comprehensive plans are not part of the county's GMA comprehensive plan..." must be accorded primacy. Therefore, the comprehensive plan to be utilized in the consistency determination procedure required by RCW 36.70B.030(2) and SCC 32.50.100 is the GMACP, and not the pre-GMA subarea plan.
12. 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.
13. 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 request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. 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. Because no substantial evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
4. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS:

- A. Future site development shall be consistent with the Martha Lake Gateway Center CB zoning and commercial subdivision approvals.
- B. In conformity with applicable standards and timing requirements:
 - i. The subject site shall be incorporated into the Martha Lake Gateway Center binding site plan subdivision approval.
 - ii. Future construction approvals shall be consistent with the revised Martha Lake Gateway Center BSP development plan, conditions, covenants and restrictions.

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.

5. Any conclusion in this 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 rezone from Freeway Service to Community Business for this property is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 4 above.

Decision issued this 7th day of September, 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 **SEPTEMBER 18, 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 **SEPTEMBER 21, 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: Scott Whitcutt

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.