

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

DATE OF DECISION: June 22, 2006

PLAT/PROJECT NAME: L-150 PATEY

APPLICANT/
LANDOWNER: Malcolm McNaughton

FILE NO.: 05 117247

TYPE OF REQUEST: PRELIMINARY PLAT for a 151-lot subdivision of 40 acres

DECISION (SUMMARY): APPROVED subject to preconditions and conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located on the east side of 79th Avenue NE, extending south of its intersection with 40th Street NE, ¼ mile, then on both sides of 79th Avenue NE for 660 feet, about 1/8 mile east of the Marysville city limits

ACREAGE: 38.95 acres

DENSITY: 3.87 du/ac (gross)
5.96 du/ac (net)

NUMBER OF LOTS: 151

AVERAGE LOT SIZE: 4,734 square feet

MINIMUM LOT SIZE: 3,000 square feet

OPEN SPACE: 16.8 acres

ZONING: R-9600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential – Limited (4-5 du/ac)
Subarea Plan: Snohomish/Lake Stevens
Subarea Plan Designation: Suburban Residential (2-4 du/ac)

UTILITIES:

Water:
Sewage: City of Marysville

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on September 7, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on June 1, 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 19, 20 & 21)

A SEPA determination was made on April 27, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on June 7, 2006, the 93rd 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 June 7, 2006 at 11:15 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. Bob Pemberton, PDS, appeared and submitted an amended staff report as Exhibit 39.
3. Mr. Lafe Hermen, Core Design, stated that he agreed with the PDS staff report and wanted to add a precondition to allow the preliminary plat to be amended to allow a proposed adjacent road to be lined up, and in this regard submitted Exhibit 40.
4. Mr. Mark Brown, DPW, stated that he agrees with the alignment.
5. No one appeared in opposition to the request.

The hearing concluded at 11:30 a.m.

NOTE: Audio tapes of this 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. The request is for a 151-lot subdivision of 40 acres.
4. The site and all surrounding properties are zoned R-9600 and are within an Urban Growth Area. The area is developed with large lot residential and low intensity agricultural uses. However, several newer, higher density residential subdivisions exist in the general vicinity.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$35.75 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 3-6, Exhibit 39)
7. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
8. There are three wetlands on the property, which will be preserved and protected with appropriate Native Growth Protection Area buffers. This evaluation has been reviewed to insure compliance with Chapter 30.62 SCC (Chapter 32.10 SCC) Critical Area Regulations.
9. Stormwater runoff from the proposed impervious surfaces will be collected by systems of pipes, ditches and catch basins to two detention vaults, one along the north property line and one in 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 applicant must secure the approval of the Snohomish County Health District.
11. Public water and sewer service will be available for this development as well as electrical power.
12. At the time of application, the subject property was designated Urban Low Density Residential – Limited (ULDR-L: 4-5 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential-Limited designation “allows mostly detached housing development on larger lot sizes. This designation is applied to a portion of the Sunnyside area that is confined to the lowest density

urban zone because of environmental constraints and difficulties in service provisions. Implementing zones: include R-9,600 and R-8,400 and PRD-9,600.” PDS finds the requested subdivision under the existing zoning of R-9,600 to be consistent with the General Policy Plan’s Urban Low Density Residential-Limited designation of the property.

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. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
15. 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.
16. The aerial photograph (Exhibit 10) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
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 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, except for the addition of a precondition on the alignment of roads.
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 would allow for the development of single-family homes in a rapidly growing area adjacent to the City of Marysville, which is consistent with the development that is presently taking place there now.
5. The request should be approved subject to compliance by the applicant with the following Precondition and Conditions:

PRECONDITIONS

1. The preliminary plat may be amended to allow the proposed adjacent road to line up.
2. The applicant shall receive the approval of the Snohomish Health District prior to any development of the final plat.

CONDITIONS

- A. The preliminary plat received by PDS on March 22, 2006 (Sheets 5, 6 and 7) shall be the approved plat configuration. 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. The platlor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iii. A final mitigation plan based on the preliminary Final Wetland Mitigation Plan Map for L-150 Patey Assemblage, prepared by Wetland Resources, Inc., Revision #1, dated August 24, 2005 shall be submitted for review and approval during the construction review phase of this project.
- 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 Lake Stevens School District No. 4 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 eight existing parcels. Lots 1 through 8 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:

\$1,883.38 per lot for mitigation of impacts on county roads paid to the county,
\$72.72 per lot for transportation demand management paid to the county,
\$15.72 per lot for mitigation of impacts on state highways paid to the county,
(WSDOT ID# DOT-34 – SR9 at 108th St. NE)

\$1,939.20 per lot for mitigation of impacts on City streets for the City of Marysville paid to the City. Proof of payment shall be provided.

\$201.29 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iii. An easement on lot 69 for intersection sight distance to the satisfaction of the DPW.
- iv. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) with the following language on the face of the plat;

"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. The activities as set forth in UDC 30.91N.010 are allowed when approved by the County."

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$35.75 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- ii. Urban frontage improvements shall be constructed along the parcel's frontage on 79th Ave NE to the specifications of the DPW.
- iii. Access to lot 27 shall be provided to the satisfaction of code.
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

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. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and **approval prior to installation.**

- v. The final wetland mitigation plan shall be completely implemented.

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.

- 7. 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 151-lot SUBDIVISION on 38.40 acres, along with a Boundary Line Adjustment, which will be approved administratively are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 6, above.

Decision issued this 22nd day of June, 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 **July 3, 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 **July 6, 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: Bob Pemberton
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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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 June 22, 2007.

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)
