

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 05 118396 LU
DALE COUTURE)	
)	
Business Park (BP) preliminary site plan)	

DATE OF DECISION: August 25, 2006

PROJECT NAME: *Bev-Ed Business Park*

DECISION (SUMMARY): The application for a business park preliminary site plan is **CONDITIONALLY APPROVED** subject to preconditions and conditions.

BASIC INFORMATION

GENERAL LOCATION: The property is located 11831 Beverly Park Road, Everett, Washington.

ACREAGE: 10.56 acres

ZONING: BP

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Urban Industrial
Subarea Plan:	Paine Field
Subarea Plan Designation:	Business Park

UTILITIES:

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS):

Approval subject to preconditions and conditions

Public Works (DPW):

Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on October 12, 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 22, 23 and 24)

A SEPA determination was made on June 23, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 1, 2006, the 90th 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 1, 2006 at 4:03 p.m.

1. The Examiner announced that he had 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, Dale Couture, was represented by Chris Fusetti of Sierra Services, Inc. Snohomish County was represented by Scott Whitcutt of the Department of Planning and Development Services.
3. No member of the general public participated in this review by document or by attendance and testimony at the hearing. There are no contested issues between the parties of record.

The hearing concluded at 4:10 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 applicant, Bev-Ed Business Park, through Dale Couture, filed an application for approval of a business park preliminary official site plan in order to develop a 10.56-acre site by constructing a 147,000 square foot business park warehouse and distribution structure with associated storm water, parking and landscape facilities and wetland enhancement. Staff has reviewed an administrative binding site plan record of survey subdivision application to create (through subsequent subdivision approval) four integrated lots within the boundaries of the subject business park plan.
3. The subject site is addressed 11831 Beverly Park Road near Gibson Road and adjoins Paine Field Airport to the west, Business Park zoning on the east, north and southwest and Light Industrial zoning to the west. To the south is Low Density Multiple Residential and R-9,600 single-family zoning.
4. The site slopes moderately (17%) to the southwest. A minor wetland will be impacted by site development but will be mitigated pursuant to SCC 30.62. Business Park landscaping will replace the existing evergreen and deciduous second growth vegetation.
5. The 147,000 square feet of industrial office park and warehouse space will generate 1,023 average daily trips, of which 123 will be morning peak hour trips and 126 will be p.m. peak hour trips.
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. 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).
8. The property is designated Business Park (BP) on the pre-GMA Paine Field 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.
9. 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.
10. 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.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
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 preconditions and conditions:

PRECONDITIONS

- A. A record of developer's 30.66B SCC mitigation obligations shall have been recorded with the County Auditor. [30.66B.070 SCC]
- B. Five feet of additional right-of-way shall be deeded to Snohomish County, parallel and adjoining to the existing right-of-way along the parcel's frontage on Gibson Road. [SCC 30.66B.177]

CONDITIONS

- A. The BP official site plan received by PDS on May 3, 2006, (Exhibit 19) shall be the BP official site plan. SCC 30.31A.500 shall govern changes to the BP official site plan.
- B. Prior to initiation of any 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 BP Final Plan approval and permits approved pursuant to Condition A, above.
 - ii. The applicant shall mark with temporary markers in the field the boundary of the wetland mitigation NGPA using methods and materials acceptable to the county.
 - iii. The Final Wetland Mitigation Plan shall be approved consistent with provisions of SCC 30.62.
 - iv. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$199,508.40. [30.66B.310 SCC].
 - v. The applicant shall make a payment to Snohomish County in the amount of \$9,481.50 for TDM. [SCC 30.66B.710]

vi. The applicant shall make a payment to Snohomish County for the Washington State Department of Transportation in the amount of \$36,832.32 for mitigation of traffic impacts. [SCC 30.66B.710]

vii. Approval of construction of the frontage improvement plan to the specification of DPW.

C. Prior to issuance of the first occupancy of the business park development:

i. 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 plattor 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.

ii. The final wetland mitigation plan shall be completely implemented.

iii. Approval of the frontage improvements by DPW constructed by the developer per the approved plans.

D. In conformity with applicable standards and timing requirements:

i. The final landscape plan providing mandatory buffers shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

ii. Parking areas and access lanes shall be completed per the approved site-landscape plans

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 Business Park preliminary official site plan is hereby **CONDITIONALLY APPROVED**, subject to the preconditions and conditions set forth in Conclusion No. 4 above.

Decision issued this 25th day of August, 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 5, 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 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 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: Andrew Smith

<p>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.</p>

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 AUGUST 25, 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)
