

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: October 25, 2006

PLAT/PROJECT NAME: *COX/EMR PRD*

APPLICANT/
LANDOWNER: CamWest Development

FILE NO.: 05 120466 LU

TYPE OF REQUEST: A 70-unit PLANNED RESIDENTIAL DEVELOPMENT (PRD) with concurrent REZONE from Residential-9600 (R-9600) to Residential-7200 (R-7200) and binding site plan and landscape modification

DECISION (SUMMARY): Requests APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 21818 39th Avenue SE, Bothell, WA

ACREAGE: 9.67 acres

DENSITY: 7.24 du/ac (gross)
13 du/ac (net)

AVERAGE LOT SIZE: 130,315 square feet

MINIMUM LOT SIZE: 22,032 square feet

OPEN SPACE: 88,321 square feet

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Alderwood Water & Wastewater District
Sewage: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

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 May 31, 2006. (Exhibit 18)

The Hearing Examiner (Examiner) made a site familiarization visit on October 5, 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 24, 25 and 26)

A SEPA determination was made on August 7, 2006. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on October 10, 2006, the 76th 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 October 10, 2006 at 2:05 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. Tom Erlichman, an attorney for the applicant appeared and introduced Mr. Aaron Hollingbery of CamWest Development. Mr. Hollenberry stated that the open space would be approximately two acres and this would have the unusual phase of the development being an auto court which will provide private access to clustered homes.
3. Mr. Erlichman stated that he desired to change Condition A of the PDS staff report and indicated that there has been work done in meeting with the neighbors.
4. Ms. Monica McLaughlin, PDS, appeared and stated that the proposed condition they do not agree with provided for proposed minor changes and submitted Exhibit 45.

5. Mr. Mark Brown, PDS (traffic) appeared and gave his comments. He stated that the last page of Exhibit 46 is not applicable.
6. Mr. Gene Grieve, who resides in the immediate area appeared and submitted Exhibit 46 with an attached map. He stated that he wants future development to be comfortable with the area along 220th Street and showed where he lives. He desired that the Examiner be aware of his concerns regarding future development being that which properly fits the area.
7. Mr. Erlichman stated that Mr. Grieve is concerned by how the area will be developed. He stated that Mr. Brown, under Exhibit 39, properly addresses the traffic impacts and he stated that the testimony supports the present proposal.
8. No one else spoke in opposition to this matter.

The hearing concluded at 3:05 p.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. Parties appeared setting forth their concerns as to how the area would be developed. In particular, Mr. Grieve spoke and submitted Exhibit 46 which shows those concerns.
4. The request is for a rezone of a 9.67 acre site from R-9600 to R-7200, along with official site plan approval for a 70 unit PRD with landscape modification. Two existing single-family residences are to be removed and the site developed with new single family homes. Access will be provided by new public roads which will intersect with 39th Avenue SE and 220th Street SE and by private auto courts connecting with public roads.
5. Properties to the east are zoned R-7200 and to the north, PRD-7200, and west R-9600 and south R-9600. All are developed with single-family residential homes.
6. 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.

7. 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 41A)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There is one Type 4 stream and one Type 5 stream located in the northwest portion of the property, along with some areas of steep slopes in excess of 33%. The critical areas report, Exhibit 12, has been reviewed by the PDS staff who has determined that the project can comply with County critical area regulations under Chapter 30.62 SCC.
10. Rainwater runoff will be collected and transported via catch basins and pipes to an underground detention vault located at the southwest corner of the site. The stormwater will then be released at a controlled rate into the existing drainage system within 220th Street SE. Water quality will be provided by a storm filter downstream of the detention vault facility.
11. 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).
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations. The Health District also recommends that the existing septic systems be abandoned as well as the existing wells.
13. The subject property is designated Urban Low Density Residential (ULDR: 4-6 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 designation “covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones.” PDS finds the requested rezone to be consistent with the General Policy Plan’s Urban Low Density Residential designation of the property.
14. 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 7-14 of the PDS staff report. (Exhibit 41A) Specifically, it also provides that the total open space is met with 88,321 square feet, a little over 20% percent of the gross site area which is 84,213 square feet (approximately two acres)

15. 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.
16. 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.

17. 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.
18. 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.
19. The aerial photograph (Exhibit 16) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
20. Public water and sewer service will be available for this development as well as electrical power.
21. 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.
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 is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The request is for a PRD for 70 lots as well as a modification of landscaping requirements. Upon review of the request and the modification this request is reasonable and will allow for the development of single-family homes in this attractive area which is consistent with the development that has taken place around it.
6. The changes to the conditions are minor and are made as shown in Exhibit 45.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The PRD Site Plan received by PDS on September 25, 2006 (Exhibit 22), Conceptual Building Elevations received by PDS on February 1, 2006 (Exhibits 5, 7 and 8), Auto Court details received by PDS on May 31, 2006 and June 15, 2006 (Exhibit 19) and detailed Landscape, Tree Retention and Recreation plan approved per condition B. ii., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. A detailed landscape, tree retention and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 20F and with all required landscape standards for perimeter, streetscape and open space treatment.
 - ii. The applicant 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.
- C. The following additional restrictions and/or items shall be indicated on the face of the final recorded Binding Site Plan:
 - i. Chapter 30.66B SCC requires mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,031.30 per unit for mitigation of impacts on county roads paid to the County,
 - \$7.32 per unit for mitigation of impacts on state highways paid to the County (WSDOT ID #19)
 - \$181.20 per unit for mitigation of impacts on state highways paid to the County (WSDOT ID #20)

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving the condominium units. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- ii. All development within the binding site plan is to be consistent with the PRD Official Site Plan approved under file number 05-120466 LU.
- iii. All open space shall be protected as open space in perpetuity. Use of the open space tracts within this development is restricted to those uses approved for the planned residential development, to include any critical areas and their buffers, open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, 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 binding site plan, 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, as mitigation for impacts to the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by February 1, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
- v. The units within this development will be subject to school impact mitigation fees for the Northshore School District 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 2 existing lots. Units 1 and 2 shall receive credit.
- vi. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the binding site plan:

"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 SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

D. Prior to recording of the final Binding Site Plan:

- i. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. 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 PDS.
- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved, unless a bond or other guarantee of performance is submitted to and accepted by PDS, pursuant to Condition D.iii., below.

- iii. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.41D.300, SCC 30.41D.310 (performance of biding site plan site improvements), SCC 30.42B.125(5)(b) and SCC 30.42B.210(3) (PRD development and landscaping).
- 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 applicant 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. Urban frontage improvements shall be constructed along the parcel's frontage on 39th Ave SE and 220th St SE consistent with section 4 of the PDS traffic review memo dated August 29, 2006 (Exhibit 39).

E. Prior to issuance of the first building permit in the PRD:

- i. The required PRD perimeter buffer/fencing shall be installed.

F. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.
- ii. The features on the approved TDM plan shall be constructed/installed.

8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for approval a REZONE from R-9600 to R-7200 and concurrent approval of a 70-unit PLANNED RESIDENTIAL DEVELOPMENT BINDING SITE PLAN, along with LANDSCAPE MODIFICATION are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 25th day of October, 2006.

Robert J. Backstein, 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 **November 6, 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 **November 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 this case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin/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.