

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
LANDMARK ON 27TH, LLC) **FILE NO. 05 121728 SD**
(Julie Stivers))
)
30-lot planned residential development (PRD) of)
4.41 acres with concurrent rezone from R-9,600)
to R-7,200)

DATE OF DECISION: July 19, 2006

PLAT/PROJECT NAME: *Landmark*

DECISION (SUMMARY): The requested 30-lot planned residential development subdivision and concurrent rezone from the existing R-9,600 to R-7,200 are **CONDITIONALLY APPROVED with a precondition.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 9315 27th Avenue SE, Everett, Washington.

ACREAGE: 4.41 acres

NUMBER OF LOTS: 30

AVERAGE LOT SIZE: 3,733 square feet

MINIMUM LOT SIZE: 3,211 square feet

DENSITY: 6.8 du/ac (gross)
11.5 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)
Subarea Plan: North Creek
Subarea Plan Designation: Suburban (1-4 du/ac)

UTILITIES:

Water/Sewer: Silver Lake Water & Sewer District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to precondition and conditions
Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on July 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 18, 19 and 20)

A SEPA determination was made on June 5, 2006. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on July 11, 2006, 2006, the 27th 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 July 11, 2006 at 11:02 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Landmark on 27th LLC, was represented by Merle Ash of Land Technologies and attorney Bill Foster. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services. The owner of a parcel to the north, Mr. Rankin, appeared but did not testify. His concerns were addressed during a recess called for that purpose.
3. No other public participation occurred.

The hearing concluded at 11:54 a.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 of 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 report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The applicant, Julie Stivers, (Landmark on 27th LLC), filed an application to place 30-lots on 4.41 acres on the east side of 27th Avenue SE approximately 150 feet north of 94th Place SE. The applicant proposes to remove a church building (the former Landmark Baptist Church) and three existing dwellings with their associated outbuildings. A boundary line adjustment will be used to acquire some of the northernmost portion of the site for part of a cul-de-sac. Another parcel, no part of which will be required for this development, may have related title defects. That parcel's owner, a Mr. Rankin, appeared but did not testify. However, a recess enabled him and the applicant to discuss concerns, resulting in an agreement of which the Examiner needs not be privy. Ms. McLaughlin for the County urged the Examiner to leave that Rankin parcel subject to a recommended precondition requiring a boundary line adjustment. The applicant's attorney, Bill Foster, felt that condition was unnecessary but reluctantly acquiesced after discussion with Mr. Rankin. Seeing no evidence that the precondition will prejudice the applicant, the Examiner adopts the view urged by Ms. McLaughlin. (See "Preconditions", supra.)
4. 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.
5. 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.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. Further, the Everett School District reports that elementary and middle school children will walk to school and high school students will walk to a bus stop on 27th Avenue SE at 91st Street SE. The County urges that offsite walkways be required to serve all three levels of students and that recommendation is incorporated herein as Condition D-ii.
7. The project will produce 258 average weekday vehicular trips, less credit for the existing church and for transportation demand management credit for a net trip generation of 217 trips, of which 17 are a.m. peak hour trips and 24 are p.m. peak hour trips.

8. 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).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service will be available for this development (Silver Lake Water District) as well as electrical power.
10. There are no wetlands or other critical areas as defined by SCC 30.62 on or within 100 feet of the subject site.
11. 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, which is the case here.
12. 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.

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. As noted in the staff report to the Hearing Examiner, the proposal meets the planned residential development requirements of SCC 30.42B as to unit yield and bonus, the design criteria in general and specifically as to open space, landscaping, tree retention, drainage detention, and bulk regulations. Further, the application proposes single-family residential structures with modulated front setbacks, a visually diversified streetscape, and designs reducing the garage as a visual focal point. No portion of any structure will project into any open space.
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. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

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 (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 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 evidence was submitted of noncompliance with the requirements of Chapter 30.42A, the application is presumed to meet those requirements.
5. The request should be approved subject to compliance by the applicant with the following precondition and conditions:

PRECONDITION:

The applicant shall provide evidence that boundary line adjustment applications to acquire the northern portion of the property, as depicted on the preliminary plat map, have been approved by PDS and recorded with the county Auditor.

CONDITIONS

- A. The Preliminary Plat (Exhibit 9) received by PDS on June 14, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Preliminary Plat/PRD Site Plan received by PDS on June 14, 2006 (Exhibit 9), Conceptual Building Elevations received by PDS on July 12, 2005 (Exhibit 2) and Detailed Landscape and Recreation plan approved per condition B. i., 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 and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 22 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,639.31 per lot for mitigation of impacts on county roads paid to the County,

Pay the following per lot for mitigation of impacts on state highways paid to the County:

<u>Proj. I.D. #</u>	<u>Description</u>	<u># ADT</u>	<u>Cost/ADT</u>	<u>Improvement Cost</u>	<u>Cost per lot</u>
DOT 11	SR I-5	23	\$113.44	\$2,609.12	\$ 86.97
DOT 13	SR 527	46	\$109.89	\$5,054.94	\$168.50

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 PDS.

On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works grants a formal deviation.

- ii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-121728-001 SD, and as may be amended by any revisions approved by PDS.
- 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 any 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 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 dwelling units within this development are subject to park impact fees in the amount of \$1,361.22 per newly approved dwelling unit, as mitigation for impacts to the Centennial 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 July 12, 2010 (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 lots within this subdivision will be subject to school impact mitigation fees for the Everett 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 three existing lots. Lots 1-3 shall receive credit.”

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the property frontage with 27th Avenue SE unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development. [SCC 30.66B.410]
- ii. Construction of an offsite walkway to Jefferson Elementary (2500 Cadet Way), Eisenhower Middle School (10200 25th Avenue SE), and the nearest school bus stop location as identified by the Everett School District (currently the intersection of 27th Ave. SE and 91st Street SE) must have been completed along the route in any locations where none currently exist. [RCW 58.17.110]
- iii. The Conditional Use Permit for the church (file ZA 8709443) shall be vacated by filing a Notice of Land Use Permit Vacation form with the county auditor on a form provided by PDS.
- iv. 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.
- v. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- vi. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b).
- vii. The existing onsite sewage system(s) shall be abandoned by having the septic tank(s) pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272-18501). Documentation demonstrating completion of this work must be submitted. Any existing well(s) shall be decommissioned in accordance with WAC 173-160-381. A copy of the well contractors decommissioning report(s) must be submitted.

E. 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.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 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

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 30-lot Planned Residential Development Subdivision on 4.41 acres with a concurrent rezone from Residential-9,600 to Residential-7,200 are **CONDITIONALLY APPROVED, SUBJECT TO COMPLIANCE** with the precondition and conditions set forth in Conclusion 5, above.

Decision issued this 19th day of July, 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 **JULY 31, 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 **AUGUST 2, 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: Monica McLaughlin
Department of Public Works: Ann Goetz

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.

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 JULY 19, 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)
