

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: December 8, 2006

APPLICANT/
LANDOWNER: L-165-1 Marks, LLC

FILE NO.: 05 122771 SD

TYPE OF REQUEST: Rezone of 9.12 acres from Rural Conservation (RC) Residential-7,200 (R-7,200) and a preliminary plat approval for a 15 lot subdivision/ Planned Residential Development (PRD)

DECISION (SUMMARY): **APPROVED** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 12304 Seattle Hill Road, Snohomish, Washington.

ACREAGE: 9.12 acres

DENSITY: 1.75 du/ac (gross)
6.17 du/ac (net)

NUMBER OF LOTS: 15

AVERAGE LOT SIZE: 3,871 square feet

MINIMUM LOT SIZE: 2,960 square feet

ZONING: CURRENT: RC
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Cross Valley Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 1

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 March February 21, 2006 and revised on August 8, 2006. (Exhibits 1 and 15)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 29, 30 and 31)

A SEPA determination was made on September 19, 2006. (Exhibit 28) No appeal was filed.

The Examiner held an open record hearing on November 21, 2006, the 55th 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 November 21, 2006 at 2:00 p.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, L-165-1 Marks, LLC was represented by Steve Anderson of Group Four. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.

The hearing concluded at 2:09 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:

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 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. L-165-1 Marks, LLC (applicant) proposes to rezone a 9.12 acre site on Seattle Hill Road from RC to R-7,200 and approval of a 15 lot Planned Residential Development (PRD) subdivision on the site. The site is addressed as 12304 Seattle Hill Road, but is located on both sides of the road. All development will occur on the north side. Access to the site will be provided by a new public road which will connect to 57th Drive SE within the recently completed *Outlook Ridge* plat.
4. Stormwater will be collected and conveyed to an underground detention vault on the site. Runoff will be released into a tight line system into a Type 4 stream. Water quality will be controlled by a storm filter system below the detention vault.
5. One large Category 2 wetland exists on the north parcel and a Category 3 wetland is found south of Seattle Hill road. Water from this wetland flows under Seattle Hill Road. Another Type 4 stream is on the north side. Wetlands and streams will be preserved and placed in Native Growth Protection Area tracts. The Category 2 wetland will be disturbed by the installation of a pipe and mitigation for the disturbance will be accomplished by restoration and installation of native vegetation.
6. There was no public comment on this proposal.
7. The applicant will pay impact fees and other charges as follows:

Parks: \$1,244.49 per single-family unit.
Roads: \$35,772.66
Schools: at rate in affect when building permits are issued
Transportation demand management: \$1,065.00
8. The proposal was found to be concurrent on March 25, 2006. The proposal will generate 133.98 new average daily trips, with 10.5 new a.m. peak hour trips and 14.4 new p.m. peak hour trips. Frontage improvements will be required on the north side of Seattle Hill Road, as modified by the approved deviation to county standards. The County requires 23 feet of pavement from the centerline of the road to a six-inch curb, a five-foot planter strip and a five-foot side-walk. No frontage improvements will required on the south side of Seattle Hill Road until development occurs.
9. School children will have safe walking conditions to the bus by walking through the *Outlook Ridge* subdivision.
10. 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.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
12. Public water and sewer service will be available for this development by Cross Valley Water District and Silver Lake Water District as well as electrical power by Snohomish County PUD No. 1.

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-7,200, which is the case here.
14. The applicant proposes to utilize the PRD provisions of SCC in the design of the subdivision. Chapter 30.42B SCC sets forth the modifications permissible in a PRD, including unit yield, design criteria, open space, landscaping, tree retention, drainage detention, roads, access, pedestrian facilities and parking, bulk regulations, and housing types.
15. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

CONCLUSIONS of LAW:

1. The Examiner has reviewed the PDS staff report and finds that it sets forth the issues, the land use requests, and cites applicable regulations and policies and their effect upon the request. The PDS staff report is adopted by the Examiner as a conclusion of law to avoid needless repetition. The Examiner does not propose any changes to the recommendations of staff.
2. 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.

The Examiner concludes that the proposal to rezone the property from RC to R-7,200 is consistent with these criteria. The R-7,200 zone is an implementing zone for the ULDR land use designation.

3. 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 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision 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. Hereto, the proposal satisfies these criteria.
4. A PRD must satisfy the criteria in Chapter 30.42B SCC. Staff has carefully considered these criteria in their recommendation, and the Examiner agrees that the proposal will qualify as a PRD.

5. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
6. 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.
7. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, 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 requests to rezone the above described property from Rural Conservation to Residential-7,200 on property on both sides of the road at 12304 Seattle Hill Road and for approval of the Planned Residential Development are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 27) received by PDS on October 6, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on October 6, 2006 (Exhibit 27), Conceptual Building Elevations received by PDS on February 21, 2006 (Exhibit 6) and Detailed Landscape and Recreation 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 20 and with all required landscape standards for perimeter, streetscape and open space treatment.
 - ii. The plattor 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 conceptual Critical Area Study & Wetland Mitigation Plan for L165-1 Marks, prepared by Wetland Resources, Inc., dated Revision #1, October 26 2006, 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. Any future development of tracts 991 or 992 shall require frontage improvements to county standards along the frontages of tracts 991, 992 and 998.

- ii. “Chapter 30.66B SCC requires traffic impact mitigation payments in the amounts shown below for a single-family residence (or twice the amount for a duplex):

\$2,384.84 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area D. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

\$70.70 per lot shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area “D”.

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 this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

- iii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Seattle Hill Road shall be dedicated to the County along the development’s frontage such that 40 feet of right-of-way exists from centerline on both sides of the Seattle Hill Road right-of-way.
- iv. The internal plat road right-of-way (57th Dr. SE) shall have been widened to 51 feet or a deviation to the design standards shall have been granted.
- v. “All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-122771 SD.”
- vi. “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 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 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.”
- vii. “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 21, 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.”
- viii. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish 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 one existing lot. Lot 1 shall receive credit.”
- ix. 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 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 SCC 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."

D. Prior to recording of the final plat:

- 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 30.42B.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 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 Critical Areas Mitigation Plan shall have been satisfactorily implemented.
- vi. Construction of urban standard frontage improvements on Seattle Hill Road shall have been completed and approved by the county.

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.

Decision issued this 8th day of December, 2006.

Gordon Crandall, Hearing Examiner Pro Tem

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 **DECEMBER 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 **DECEMBER 22, 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: Paul Lichter / 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.