

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

In the Matter of the Application of)
) **FILE NO. 05 125572**
CITY OF MARYSVILLE)
Sisco Water Reservoir)
)
Conditional use permit for a three million gallon)
water storage tank)

DATE OF DECISION: January 18, 2006

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED**.

BASIC INFORMATION

LOCATION: The subject property is located at 7019 Wade Road, Arlington

ACREAGE: 3 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential 5

Pre-GMA Subarea Plan: Marysville

Subarea Plan Designation: Rural (1 du/2.3 ac)

UTILITIES:

Water: Marysville

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to conditions

Public Works: Approval

INTRODUCTION

The applicant, the City of Marysville, filed the Master Application on September 27, 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 12, 13 and 14)

The Examiner held an open record hearing on January 3, 2006, the 72nd 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 January 3, 2006 at 9:05 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. No one appeared in opposition to the request.

The hearing concluded at 9:11 a.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. No letters were received in opposition to the request nor did anyone appear in opposition.
4. The request is for a Conditional Use Permit (CUP) to construct a three million gallon water storage tank. The applicant has located the water tank in this area to be better able to service its customers at this end of their service area. A water tank by itself is not essentially a residential use, but is needed to provide the water to the residences in that area of the purveyor's service area and is thereby a compatible use by necessity.

5. The surrounding area is designated Rural Residential and the implementing zoning is R-5, as are adjacent properties with medium to large lots developed with single family homes and associated out buildings. The Centennial Trail is located approximately 200 feet west of the subject site.
6. The request will not generate impacts to the County's park system or the school system.
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). Because DPW concluded that the project will not directly result in an increase in traffic after completion, there is no impact to County roads and, thus, no mitigation required. There are no vehicular access issues of concern. 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.
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. There is a Category 3 wetland at the west end of the subject site. Such a wetland requires 50-foot buffers. The record contains a critical areas plan and a wetland mitigation plan which show the wetland, the buffer and the mitigation area in compliance with SCC Chapter 30.62.
10. The subject property is designated Rural Residential-5 (RR-5) which allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
11. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.

A review of these CUP standards with the request, indicates that the standards are met and no adverse affects will be made to the area as a result of allowing a water storage tank as proposed.

12. 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.
13. 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 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 county zoning code defines a “utility” as “an entity whose principal purpose is to provide electricity, water, sewer, storm drainage, gas, radio, television, telephone and/or other forms of communication utilizing the electromagnetic spectrum to the public.” [SCC 30.910.110] The applicant is a utility in the sense that the term is utilized within the county zoning code and the applicant has shown a public need. It is a utility. A utility as defined by the zoning code provides services to the public. Even if every member of the public within its service area does not partake of the service, it is still a public service by definition. The applicant’s need to improve its service and meet its demands as required by law, is therefore a public need.
5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The conditional use permit official site plans received by the Department of Planning and Development Services on November 22, 2005 (Exhibit 15A through 15F) shall be the official site plans and approved conditional use permit configuration. SCC 30.42C.110 governs changes to the conditional use permit official site plans.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The developer 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 *Critical Areas Study and Buffer Mitigation Plan* prepared by RH2 Engineering dated November 2005 (Exhibits 6 and 15E) shall be submitted for review and approval during the construction review phase of this project.
- C. Prior to the final of the grading and or water tank permit the following must be completed:
 - 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 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 Planning and Development Services for review and approval prior to installation.

- ii. The Final Mitigation Plan shall have been satisfactorily implemented.
 - iii. All landscaping shall be installed by the applicant and approved by the Department of Planning and Development Services, per the approved landscape plan.
- D. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 15D) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- E. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- F. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

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.

- 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 Conditional Use Permit is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant, with the conditions set forth in Conclusion 5, above.

Decision issued this 18th day of January, 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 **JANUARY 30, 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 **FEBRUARY 1, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Erik Olson

<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>
