

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

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| In the Matter of the Application of |) | |
| |) | FILE NO. 05 126376 |
| EVERETT SCHOOL DISTRICT NO. 2 |) | |
| |) | <i>Elementary School No. 17</i> |
| Conditional Use Permit (CUP) and Landscape |) | |
| Modification for the construction of a new |) | |
| 62,500 square foot elementary school |) | |

DATE OF DECISION: May 2, 2006

DECISION (SUMMARY): The requested conditional use permit and landscape modification are **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

LOCATION: The subject property is located at 15404 Silver Firs Drive, Everett, northwest of the existing middle school.

ACREAGE: 13 acres

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Silver Lake Water & Sewer District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on October 19, 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 15, 16 and 17)

A Determination of Non-significance was made on May 8, 2005. (Exhibit 42)

The Examiner held an open record hearing on April 18, 2006, the 59th 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 April 18, 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. The applicant was represented by Laura Brent of Shockey Brent, Inc. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services and Mark Brown of the Department of Public Works. No one appeared in opposition to the request although, on November 15, 2005, letters of concern were submitted by Thomas E. Haller and Mr. and Mrs. Tim Stake: residents of Silver Firs Drive immediately north of the subject site.

The hearing concluded at 9:16 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The subject 13 acres is part of 60 acres for which a conditional use was granted for construction of the Gateway Middle School twelve years ago in 1994 based on an Environmental Impact Statement prepared in 1991. That EIS noted that an elementary school would be built on the remainder of the site.
4. The request is for a Conditional Use Permit (CUP) and landscape modification to construct the new elementary school of approximately 62,500 square feet to house approximately 530 kindergarten through fifth grade students and 40 staff. The facility will generate 650 daily vehicle trips of which 223 would be morning peak hour trips but only 34 would be during the evening peak hour. Access is via a new County roadway connecting 156th Street SE and Silver Firs Drive. School bus and delivery access would be at the northeast corner of the building. The main school entrance, including visitor parking and student drop-off, would be accessed on the south side of the building.
5. The landscape modification proposal is to use existing vegetation to the extent possible in lieu of new plantings in the 35-foot wide perimeter buffer area along the north and west property lines and a 100-foot wide perimeter buffer along the east property line. Also, the applicant proposes to eliminate the semi-dense Type B buffer along the new through street in favor of low-growing vegetation to be able to view student areas at all times and to deny cover to potential human predators.
6. The subject site has critical areas of steep slopes, a Type 5 stream and two Category 3 wetlands. Elimination of the wetlands is described in the staff report and the Critical Areas Study and Mitigation Plan.
7. The surrounding area is zoned PRD-9,600 to the north and east and developed with the residential plats of Silver Firs and Snohomish Cascade. Homes in both of those plats will be served by the proposed elementary school and by the existing middle school. Medium to large acreage tracts developed with single-family homes lie in R-5 zoning to the south and west.
8. The request will not generate impacts to the County's park system.
9. 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.
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 (Title 24 SCC).
11. The subject property is designated R-9,600 which allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.

12. 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. Review of those CUP standards in the staff report indicates that the standards are met and no adverse impacts will be imposed to the area as a result of allowing the proposed elementary school.
13. 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.
14. 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 preconditions and 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 for zoning conditional use permit and a landscape modification should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRE-CONDITIONS

- A. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
- B. The site plan(s) marked Exhibit 12A through F and 13A, shall be modified to include the easement for intersection sight distance.

CONDITIONS

- A. The site plan(s) marked Exhibit 12A through F and 13A, shall be the official approved development plan(s) for this project. Any discrepancy between the content of the official approved development plan(s) and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plan(s) is regulated by SCC 30.42C.110.

- 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 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.
 - iii. A Final Mitigation Plan, based on the October 2005 Critical Areas Report by Shockey Brent, Inc., shall be submitted for review and approval during the construction review phase of this project.
 - iv. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "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."
 - v. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$124,706.88.
- C. Prior to final of the building permit or the issuance of a Certificate of Occupancy:
- 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. The features on the approved TDM plan shall be constructed/installed.
 - iv. The road establishment and construction of 156th Street SE/Silver Firs Drive on school property shall have been completed and accepted by the Department of Public Works.
 - v. Improvements to 156th Street SE west of the school property shall have been completed to the satisfaction of the Department of Public Works.

- D. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plans (Exhibit 13A, B & C) shall be implemented.
- 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.

- 5. 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 and landscape modification is **CONDITIONALLY APPROVED**, subject to the PRECONDITIONS and CONDITIONS set forth in Conclusion 4, above.

Decision issued this 2nd day of May, 2006.

Ed Good, Deputy Hearing Examiner

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| EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES |
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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 **MAY 12, 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 **MAY 16, 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
Department of Public Works: Mark Brown

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| <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> |
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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 MAY 2, 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

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Certified by:

(Name)

(Title)
