

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

In the Matter of the Application of)
) **FILE NO. 05 126627**
EMBERLY, LLC)
)
Rezone from R-9,600 to R-8,400 and a 19-lot)
subdivision on 4.8 acres)

DATE OF DECISION: June 14, 2006

PLAT/PROJECT NAME: *Emberly*

DECISION (SUMMARY): The proposed rezone from the current R-9,600 to R-8,400 and the 19-lot subdivision are **CONDITIONALLY APPROVED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located at 4613 116th Street NE, Marysville, Washington.

ACREAGE: 4.78

NUMBER OF LOTS: 19

DENSITY: 4.0 du/ac (gross)
5.1 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-8,400

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: City of Marysville

SCHOOL DISTRICT: Marysville No. 25

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval subject to conditions

Public Works (DPW): Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on October 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 16, 17 and 18)

A SEPA determination was made on April 12, 2006. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on May 31, 2006, the 69th 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 May 31, 2006 at 9:04 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, Emberly, LLC, was represented by Marty Robinett of Robinett Development. Snohomish County was represented by Bob Pemberson of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works. A contested issue concerns whether specific sidewalk segments must be provided by this applicant in order to meet the requirements of RCW 58.17 for safe walking by students to and from school.
3. No member of the general public participated by documentary evidence or by testimony.

The hearing concluded at 9:48 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-A. The only contested issue in this record is whether the applicant should be required, as recommended by the staff report to the Examiner, to (A) construct an offsite segment of a walkway to the intersection of 116th Street NE and 46th Avenue NE, which is the nearest Marysville School District bus stop location serving middle school and high school students and (B) to Marshall Elementary School at 4407-116th Street NE. Those walkways would require construction along the east side of 47th Avenue NE and the north side of 116th Street NE.
- 3-B. The applicant protests the requirement for the walkways described in Finding 3-A above, primarily on grounds that the applicant would have to acquire an easement from the owner of a parcel identified on the plat map as Parcel 1-024 in order to complete the sidewalk. The applicant argues that past Hearing Examiner decisions in Snohomish County have not made a proponent hostage to the purchase of such easement. Consequently, the applicant drafted revised language (Exhibit 30) for the staff's recommended condition, which revision would leave the sidewalk requirement "...to the satisfaction of the Marysville School district." That School District's response of November 9, 2005 (Exhibit 24) to a request for review of the subject plat reads, in part: "Provide a safe walking route to Marshall Elementary."
- 3-C. Testimony by Ann Goetz of Snohomish County's Department of Public Works establishes that, absent the contested sidewalk segments, school students would have to cross 116th Street NE, walk a short distance, then cross again, in order to remain on approved sidewalks whether proceeding to the north or to the south, and do that twice daily. In summary, without the recommended sidewalk, a student who resides in the proposed plat walking to and from Marshall Elementary School, for example, would have to walk across 116th Street NE four times each day.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$48.82 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.
7. No streams, wetlands, steep slopes or other areas meeting Snohomish County definition of a critical area is known to exist on site.
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.
10. Public water and sewer service will be furnished by the City of Marysville.
11. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-8,400 zone 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 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. Specifically, there is no amendment by the Examiner of the staff's recommended Condition D. The amendment urged by the applicant's Exhibit 30 to eliminate specified sidewalk construction is not an amendment supported by the evidence of record. Further, although School District recommendations on such issues warrant substantial weight, RCW 58.17 does not authorize a County Council (or its delegate, the Hearing Examiner) to defer conditions of plat approval to a School District. The applicant knew or had reason to know at the time of purchase of the subject site that an easement would be needed in order to meet sidewalk requirements for students.
3. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
4. 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.
5. 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 application is presumed to meet those requirements.
6. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

CONDITIONS

- A. The preliminary plat received by the Department of Planning and Development Services on March 23, 2006 (Exhibit 10A) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- 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.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. "The lots within this subdivision will be subject to school impact mitigation fees for the Marysville School District No. 25 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 parcel. Lot 1 shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - iii.
 - \$1,863.76 per lot for mitigation of impacts on county roads paid to the County,
 - \$2,020.00 lot for mitigation of impacts on the City of Marysville streets paid to the City,
 - \$209.68 per lot for mitigation of impacts on the City of Arlington streets paid to the City.

The developer of this subdivision has elected to defer these payment obligations to a time preceding building permit issuance. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once building permit has been issued all mitigation payments shall be deemed paid.

- iv. On lots with more than one road frontage, county Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the PDS-Traffic grants a formal deviation.

D. Prior to recording of the final plat:

- i. The developer shall pay the County \$48.82 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.
- ii. Urban standard frontage improvements shall be constructed along the property frontage with 116th Street NE 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]
- iii. Construction of an offsite walkway to the nearest bus stop location for the middle and high school students as identified by the Marysville School District (currently the intersection of 116th Street NE and 46th Avenue NE), and to Marshall Elementary School at 4407 116th Street NE, must have been completed along a legal and the most direct route in any location where none exist. This would include the east side of 47th Avenue NE, and the north side of 116th Street NE.
- iv. 47th Avenue NE shall have been constructed from 116th Street NE to the north property line of the development, to public road standards per EDDS, and deeded or dedicated as public right-of-way.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

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.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

- 7. 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 requests for a rezone from Residential-9,600 to Residential-8,400 and a 19-lot subdivision are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 14th day of June, 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 **JUNE 26, 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 **JUNE 28, 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: Bob Pemberton
Department of Public Works: Ann Goetz

<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>
