

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: September 15, 2006

PLAT/PROJECT NAME: *YORKSHIRE*

APPLICANT/
LANDOWNER: The McNaughton Group

FILE NO.: 05 126766 SD

TYPE OF REQUEST: PLANNED RESIDENTIAL DEVELOPMENT (PRD) for a 28 lot subdivision of 3.81 acres with concurrent REZONE from Residential-9600 (R-9600) to Residential-7200 (R-7200) and a BOUNDARY LINE ADJUSTMENT

DECISION (SUMMARY): Requests APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located on the west side of Sunset Road, about 1600 feet north of the intersection of Sunset Road and 180th Street SE, Everett, WA

ACREAGE: 3.81 acres

NUMBER OF LOTS: 28

AVERAGE LOT SIZE: 3,317 square feet

MINIMUM LOT SIZE: 3,123 square feet

DENSITY: 7.35 du/ac (gross)
7.35 du/ac (net)

OPEN SPACE: 34,410 square feet (0.79 acres)

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approve subject to conditions
Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on November 21, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on August 24, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on July 25, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 31, 2006, the 61st 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 August 31, 2006 at 2:05 p.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. Mr. Brian Holtzclaw representing the applicant appeared and stated that he agreed with the PDS staff report and that he had no objection to the conditions. However, he wanted a confirmation that the school district will bus the children.
3. Mr. Darryl Eastin appeared on behalf of PDS and stated that with regard to that confirmation, he will submit a revised condition to replace Condition E.iii. This was done as Exhibit 39.

4. The hearing record was left open until Friday, September 8, 2006 for the limited purpose of receiving that confirmation. (See Exhibit 40)
5. No one appeared in opposition to the request.

The hearing concluded at 2:13 p.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection 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 request is for a rezone of a 3.81 acre site from R-9600 to R-7200 and preliminary plat approval for a 28-lot PRD. All of the lots will be developed with new single-family homes and no duplexes are proposed.
4. The applicant has submitted a boundary line adjustment as part of this request to transfer a 6300 square foot triangular portion of the *Yorkshire* site to the site for the *Summerwood* subdivision that received preliminary approval in March, 2005.
5. The adjacent zoning uses to the north and west are R-9600, with some already developed as single-family residential. To the east the zoning is R-7200 and to the south is R-7200 PRD.
6. 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.
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) 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. (See Pages 3-6, Exhibit 38)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
9. There are no critical areas located on or within 100 feet of the subject property.

10. Stormwater runoff from *Yorkshire* will be collected and transported via catch basins and pipes to an underground detention vault located in the southeast section of the recently approved *Summerwood* PRD subdivision. 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 Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems shall be abandoned.
12. Public water and sewer service will be available for this development as well as electrical power.
13. 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). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
14. 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.
15. 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.

16. The proposal has been evaluated by PDS for compliance with the Planned Residential Development provisions of Chapter 30.42B SCC. This proposal is consistent with these provisions.
17. 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.
18. The aerial photograph (Exhibit 15) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
19. The proposal is to develop the property pursuant to Planned Residential Development under Chapter 30.42B SCC. The PDS staff analysis in this development provides that this may be done and is set forth in detail on Pages 7-11 of the PDS staff report. (Exhibit 38) Specifically, it also provides that the total open space is met with 34,410 square feet (0.79 acres), a little over 20 percent of the gross site area.

20. Information was received by the Everett School District via the DPW relating to the bus stop locations/student waiting areas. (Exhibit 41)
21. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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, except for the agreed upon amendment to Condition E.iii. as shown on Exhibit 39.
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 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 evidence is presumed to meet these requirements.
5. The request will provide for single-family homes in this very rapidly growing area of the county consisting generally of single-family homes.
6. The proposed 28 lot PRD subdivision should be approved, along with the proposed boundary line adjustment, subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 19) received by PDS on August 7, 2006, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The Conceptual Building Elevations received by PDS on November 21, 2005, (Exhibits 9A-C), PRD Site Plan (Exhibit 19), and Landscape, Recreation and Tree Retention Plan (Exhibits 20A & B) 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. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of 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. 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. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.

- ii. The applicant shall record the Yorkshire Boundary Line Adjustment (05-126766 BA) with the Snohomish County Auditor.
- C. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- D. 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 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 4 existing lots. Lots 1-4 shall receive credit.”
 - 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):
 - a) \$2,008.33 per lot for mitigation of impacts on County roads paid to the County.
 - b) \$70.34 per lot for Transportation Demand Management paid to the county
 - c) \$177.86 per lot for mitigation of impacts on City streets for the City of Mill Creek paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of individual building permit issuance for each single family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or any of the lots therein. Once residential building permits have been issued all mitigation payments shall be deemed paid by PDS.
 - iii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-126766 SD.
 - iv. “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 open play areas, tot lot, trail system, 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.”
 - v. The developer shall pay the County \$1,244.49 per single family unit as mitigation for impacts to the Naketta Beach Park Service Area of the County parks system in accordance with SCC 30.66A. 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.
- E. Prior to recording of the final plat:
- i. Urban standard frontage improvements shall be constructed along the parcels frontage on Sunset Road to the satisfaction of the DPW.

- ii. Adequate public access shall be provided.
- iii. Adequate confirmation shall be provided that indicates that all school age students will be picked up along the parcel's frontage on Sunset Road. If the location for student pickup is not along the parcel's frontage on Sunset Road, off-site pedestrian improvements may be required [RCW 58.17.110].
- iv. Covenants and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of commonly owned tracts 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.
- 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).

F. 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.

G. All development activity shall conform to the requirements of 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 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.

- 7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The requests for a REZONE from R-9600 to R-7200, PLANNED RESIDENTIAL DEVELOPMENT for a 28-lot subdivision along with a BOUNDARY LINE ADJUSTMENT are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 15th day of September, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **September 25, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **September 29, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Darryl Eastin/Mark Brown

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.
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