

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: September 13, 2006

PLAT/PROJECT NAME: *OUTLOOK POINT*

APPLICANT/
LANDOWNER: TNT Real Estate, LLC

FILE NO.: 05 127256 SD

TYPE OF REQUEST: A 25-lot PRELIMINARY PLAT of 5.8 acres utilizing lot size averaging, with a concurrent REZONE from Rural Conservation (RC) to Residential-7200 (R-7200)

DECISION (SUMMARY): APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 12209 Seattle Hill Road, Snohomish, WA

ACREAGE: 5.84 acres

DENSITY: 4.3 du/ac (gross)
5.1 du/ac (net)

NUMBER OF LOTS: 25

AVERAGE LOT SIZE: 5,361 square feet

MINIMUM LOT SIZE: 3,939 square feet

OPEN SPACE: 66,001 square feet (1.52 acres)

ZONING: CURRENT: RC
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water: Cross Valley Water District
Sewage: Silver Lake Sewer 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 20, 2006. (Exhibit 11)

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 19, 2006. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 29, 2006, the 88th 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 29, 2006 at 3:05 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. Ms. Debbie Rothfus, Peak Engineering, appeared on behalf of the applicant and indicated that they had no objection to the PDS staff report or the conditions.
3. Mr. Paul MacCready, PDS, stated that the main issue here was the access.
4. Mr. Garth York, Marshland Cemetery Association, appeared and stated that they have used this access for over 100 years and they don't want to lose it, or their easement rights. He stated that they want to stay the way they are and concluded that they are not against the plat.
5. Mr. Bill Foster, an attorney for the applicant, submitted Exhibit 42 and stated that the cemetery is west of the property and that there is an existing gravel road. He submitted Exhibit 31 and stated that the project doesn't deny the cemetery anything, but allows them to go through the plat to use their road.

6. Mr. Norm Stone, PDS, appeared and stated that they have taken the Washington State Department of Transportation's (WSDOT) recommendation and feels that the access as proposed is safe.
7. Mr. Glen Bowen appeared and stated that in some instances they would have to relocate the graves.

The hearing concluded at 4:15 p.m.

NOTE: Audio tapes of this 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 approval of a preliminary subdivision of 5.84 acres for 25 single-family lots utilizing the lot size averaging provisions. Access will be gained directly from Seattle Hill Road on the north and the new preliminary plat of *Cambria Seattle Hill* on the south. Two open space tracts are proposed.
4. One existing residence and several out buildings will be removed. A second residence will be retained on the new Lot 9. The eastern and western portions of the site are forested. The remainder of the site is pasture. The site is within the Urban Growth Area with Marshland Cemetery, a small cemetery established in 1899 lying directly west of the proposed development. Seattle Hill Road will provide primary access for the proposed plat.
5. The issues of concern relate directly to the access to Seattle Hill Road from the proposed development and from the already existing cemetery access. There appears to be no objection to the plat itself. The new plat will provide a 20-foot wide access tract allowing additional access to the cemetery should WSDOT decide to close the cemetery's access.
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 40)
8. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.

9. There is a Category 3 wetland located in the northeast corner and extending well onto the adjacent property and will remain undisturbed and protected pursuant to Chapter 32.10 SCC.
10. Two distinct drainage basins exist on the site and runoff from the newly developed areas from both basins will be directed to the on-site wet detention pond with water quality treatment to be provided. 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 and with the understanding that the existing onsite sewage systems will be abandoned in accordance with health district regulations. Existing on-site septic systems should 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 lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. 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 19) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.

19. 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 Condition G as to access.
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 development of single-family lots is consistent with the development in the area and will provide citizens with attractive lots with some views in this area.
6. The only opposition or dispute relates to the access. The cemetery wants to retain their original access which they have had for many years. The WSDOT wants to provide one access of the adjoining properties for the benefit of safety issues. However, the WSDOT has indicated that they could wait and take a look at this at a later time.
7. The applicant desires to proceed with the development. The issue is taking away a long retained access from the cemetery, which normally has a right to access their property and giving that access to the subdivision as long as the subdivision provides some other access. In this case, the cemetery board is divided with one group wanting to retain what is there, and the other group apparently wanting to compromise. It would appear to this examiner that this is the type of situation which could be talked out and compromised so that all parties are satisfied. Possibly one way is to provide access to the cemetery through the plat, but down to the very entrance, and not further down inside the plat. However, the Examiner has no factual information submitted on this. Suffice it to say, the one bearing the burden of proof to justify safe access to all parties is on the applicant, who should have this issue resolved prior to development of the plat. A condition has been provided to this effect.
8. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The revised preliminary plat received by PDS on May 12, 2006 (Exhibit 13) 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.
 - ii. The platlor 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.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
- i. “The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
 - ii. “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 two existing parcels. Lots 1 through 2 shall receive credit.”
 - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,326.29 per lot for mitigation of impacts on county roads paid to the county,
 - \$330.17 per lot for mitigation of impacts on state highways paid to the county,
 - \$539.87 per lot for mitigation of impacts on city streets for the city of Mill Creek, paid to the city. Proof of payment is required.

These payments are due at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.
 - iv. “On lots with more than one road frontage, the county Engineering Design and Development Standards (EDDS) of Snohomish County restrict lot access to the minor road, unless a formal deviation is granted by the Department of Public Works.”
 - v. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Seattle Hill Road shall be dedicated to the State along the development’s frontage such that 40 feet of right-of-way exists from centerline of the Seattle Hill Road right-of-way.
 - vi. A perpetual access easement over Tract 997 shall be granted to the Marshland Cemetery.
 - vii. 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 30.91N.010 are allowed when approved by the County.”

- D. Prior to recording of the final plat:
- i. Frontage improvements conforming to county standards shall have been constructed along the development's frontage along Seattle Hill Road. The channelization along the frontage shall have been approved by the Washington State Department of Transportation.
 - ii. The elements of the approved TDM plan (Exhibit 4) shall have been installed.
 - iii. 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.

- E. In conformity with applicable standards and timing requirements:
- i. The preliminary landscape plan (Exhibit 15) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

EXAMINER'S CONDITION

- G. The applicant shall contact the WSDOT and the Marshland Cemetery Association to see if a mutual access can be worked out prior to final approval of the preliminary plat. If that is done, and PDS is satisfied that this condition has been met, the applicant may proceed with development of the plat.

Nothing in this recommended 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

9. 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 Rural Conservation to Residential-7200, and approval of a 25-lot PRELIMINARY PLAT utilizing lot size averaging are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 8, above.

Decision issued this 13th 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 27, 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: Paul MacCready/Norm Stone

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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