

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

In the Matter of the Application of)
)
MORNING VIEW, LLC) **FILE NO. 05 128218**
)
Preliminary plat for a 15-lot subdivision utilizing lot)
size averaging and a rezone from R-9,600 to R-7,200)

DATE OF DECISION: August 24, 2006

PLAT/PROJECT NAME: *Jordan Creek*

DECISION (SUMMARY): The proposed 15-lot subdivision and concurrent rezone from R-9,600 to R-7,200 are **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the west side of Locust Way, just south of the intersection of Lucust Way and Lockwood Road, Bothell, Washington.

ACREAGE: 3 acres

NUMBER OF LOTS: 15

AVERAGE LOT SIZE: 4,635 square feet

MINIMUM LOT SIZE: 3,018 square feet

DENSITY: 5.0 du/ac (gross)
9.5 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential
Subarea Plan: Alderwood
Subarea Plan Designation: Residential Estate (1-2 du/ac)

UTILITIES:

Water/Sewer: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Northshore No. 417

FIRE DISTRICT: No. 10

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 November 30, 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 SEPA determination was made on May 30, 2006. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on August 1, 2006, the 94th 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 1, 2006 at 10:37 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore was generally apprised of the particular request involved.
2. The applicant, Morning View, LLC, was represented by Robert Nehring of Sound Design Engineering, Inc., Snohomish County was represented by Mona Davis and Patrick McGraner of the Department of Planning and Development Services and by Ann Goetz of the Department of Public Works.
3. Public testimony was given by Nancy Jang, a vicinity resident for 27 years and a member of the Swamp Creek/Locust Way Neighborhood Association. She testifies that her daylight basement flooded last winter for the first time and that traffic is dangerous now. Testimony was also given by Matthew Jordan, also of that Association, who owns and resides upon a parcel abutting the entire south boundary of the proposed plat and for whose family Jordan Creek is named. Jang and Jordan separately submitted pre-hearing letters into the record (Exhibits 22 and 23) and Jordan submitted a packet of documents at hearing (Exhibit 34). Neighbors Dale E. Oddson and Mr. & Mrs. William E. Quillinan submitted pre-hearing letters (Exhibits 20 and 21) supportive of Jang and Jordan as to traffic issues.

The hearing concluded at 12:59 p.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 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 request is for a rezone of three acres from R-9,600 to R-7,200 in order to construct a 15-lot subdivision using lot size averaging. The PDS staff report has 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 staff report is hereby adopted by the Examiner as if set forth in full herein except as expressly otherwise noted.
3. Average weekday vehicle trips (after credit for a Transportation Demand Management plan) are 136 trips, of which 11 are morning peak hour trips and 14 are p.m. peak hour trips. By testimony and exhibits, vicinity residents Nancy Jang and Matthew Jordan point out that Locust Way in the vicinity has curves, no sidewalks and no shoulders. Matthew Jordan estimates 30 traffic accidents have occurred during the 12 years that he has lived adjacent to the proposed plat. Nancy Jang has seen traffic accidents at this location for the 27 years since 1979.
4. Ms. Jang urges that traffic be kept from near the Lockwood Elementary School due to the curves and dips in the road which limit a driver's view of the head of a youngster until the driver's car is nearly upon the youngster. Mr. Jordan points out that approximately 100 neighbors attended a meeting in June 2006 hosted by Snohomish County to consider the realignment of the intersection of Locust Way and Lockwood Road. (See Exhibits 34 and 35) Ms. Jang notes that the realignment discussion has been ongoing for 21 years since 1985. Ann Goetz of the County's Department of Public Works testifies that she believes there is funding for that realignment in the County's current Transportation Improvement Program.
5. Mr. Jordan notes that a 1999 proposal by this applicant nearby to the west (Matthews Park) required purchase of property from Mr. Jordan (perhaps from others also) in order to improve driver sight distance at this location. (See Exhibits 23 and 31) He asks why that additional right-of-way is no longer required. In response to Ms. Jang and to Mr. Jordan, Ann Goetz of Snohomish County's staff reports that she personally recommended approval of a sight distance deviation in this matter based on analysis stamped by the applicant's engineer. The analysis showed compliance with the 338-foot stopping sight distance and 290-foot intersection sight distance required for the 35 miles per hour posted speed limit. She noted that the Engineering Design & Development Standards (EDDS) had been amended since 1999 as to object height based on standards used by Washington State. Her analysis is incorporated into the staff report to the Hearing Examiner at page four thereof. The Examiner concurs with her analysis.

6. Based on the findings of fact at Findings Nos. 4 and 5 above that sight distance is sufficient or can be made so by grading, the Examiner further finds as fact that the subject proposal complies with current EDDS requirements without any need to purchase land from private owners, including Mr. Jordan. The applicant points out that the grading will also provide safer sight distance for the senior citizens now residing in the mobile park in the immediate vicinity.
7. Matthew Jordan argues that distances are incorrectly reported in the file for (1) 100-foot buffer flags, (2) the ordinary high water mark, (3) the stream centerline, (4) structural setbacks from trees in Native Growth Protection Areas and (5) the distance to his septic drainfield from a rockery at the subject site's south boundary. He also asserts that a proposed rockery near his drainfield may threaten that drainfield. (See Finding No. 9 below)
8. In response, the applicant's biologist, William Railton, testifies that in October and November 2005, he flagged the wetland boundary and the ordinary high water mark but not the buffers. He points out that the stream centerline is not used for buffer placement. The applicant's Robert Nehring points out that one never needs to measure the centerline of the stream and that all that matters in this instance is the location of the ordinary high water mark on the east side of the stream channel. Mr. Railton also notes that the subject stream is a Type 3 stream but not an Endangered Species Act-protected stream because the stream is a mile distant, not within the ESA jurisdictional one-half mile. (See also Finding No. 11 below) Mr. Railton points out that the County staffer who checked the wetland boundary flags and approved their location has been doing that task for 17 years. The County's Senior Biologist, Patrick McGraner, testifies that, based on the evidence presented to him, it is his professional opinion that the subject plat protects the trees as required. He notes that at the preliminary plat phase, the lines challenged by Mr. Jordan are "lines on a piece of paper". Biologist Railton points out that in the construction phase, a licensed surveyor will locate the buffers and pin them and then the Native Growth Protection Area signs will be placed. In summary, the Examiner finds that at this phase, the plat meets all applicable requirements of Snohomish County Code 30.62.345 and related regulations.
9. Mr. Jordan argues that the applicant proposes a rockery along or near the southern boundary of the proposed plat and that a notation incorrectly shows his drainfield to be more than 100 feet distant but that the drainfield is in fact within 20 feet of the property line where the rockery is proposed. In response, Mona Davis of the County testifies that a driveway separates the drainfield from the proposed plat and the 100-foot separation is required to be from any detention or retention pond: none of which is present here. The applicant notes that this rockery is a fill rockery, not a cut rockery and, thus, will have no drainage impact. He also notes that the rockery issue is properly reserved for the construction phase venue. The Examiner finds Mr. Jordan's argument to be without merit.
10. 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.
11. A Type 3 tributary to Swamp Creek and an associated Category 3 riparian wetland exist on site and are accurately depicted on the site plan. The on-site stream is not considered to be presumed Chinook salmon habitat. A buffer of 100 feet is being provided.

12. 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.
13. 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). As noted under “Public Hearing” at page 2 hereof, vicinity resident Nancy Jang testifies that her daylight basement had not flooded in the 27 years of her residency nearby until last winter. Her home is immediately south of the Park at Creekside development. She does not assert that the proposed plat will certainly add to her home’s flooding but she argues that “...small increments are the way it builds.” In rebuttal, the applicant’s Mr. Nehring notes that Ms. Jang’s home is north of Lockwood and east of Locust Way, both of which roads block this plat’s storm drainage from reaching Ms. Jang’s property. Mr. Nehring adds that this plat’s storm drainage follows Lockwood Road in a closed system south of Ms. Jang’s home. Thus, the pond north of Lockwood Road cannot be impacted by this plat’s storm drainage. The Examiner finds as fact that this proposal’s drainage will not be contributing to the flooding at Ms. Jang’s home.
14. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development.
15. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
16. 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-7,200 zone which is the case here.
17. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, policies were adopted to promote urban densities of development. A comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.
18. 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.
19. 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.

20. 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.
21. The request is consistent with Section 30.70.100 SCC which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
22. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

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. The Examiner concludes that the preponderance of the evidence supports approval of the application subject to conditions.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to conditions specified below herein.
3. 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.
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. Because no substantial and persuasive evidence was submitted of noncompliance with the requirements of Chapter 30.42A, the application is presumed to meet these requirements.
5. The conclusions of law immediately above herein are entered with awareness of the public concerns expressed in this record. However, the higher density infill in lieu of sprawl implements the applicable law and policies.
6. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on February 10, 2006 (Exhibit 11) 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 lots within this subdivision will be subject to school impact mitigation fees for the Northshore School District No. 417 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."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,772.84 per lot for mitigation of impacts on county roads paid to the county,

These payments are due prior to or at the time of each building permit issuance. 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 by PDS.
 - iii. On lots with more than one road frontage, County Engineering Design and Development Standards (EDDS) restricts lot access to the minor road, unless the Department of Public Works (PW) grants a formal deviation.
 - iv. 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 32.10.110(29)(a), (c), and (d) are allowed when approved by the County."
 - v. 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.

D. Prior to recording of the final plat:

- i. Urban standard frontage improvements shall be constructed along the property frontage with Locust Way, 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]
- ii. Construction of offsite walkways to Lockwood Elementary (located at 24118 Lockwood Road) and Kenmore Junior High (20323 66th Avenue NE) for those public school students that walk to school must have been completed along the legal and the most direct route in any location where none exist.
- 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. 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 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 preliminary plat for a 15-lot subdivision utilizing lot size averaging provisions and for a rezone from Residential-9,600 to Residential-7,200 are hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 6 above.

Decision issued this 24th day of August, 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 **SEPTEMBER 5, 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 **SEPTEMBER 7, 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: Mona Davis
Department of Public Works: Ann Goetz

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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