

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

In the Matter of the Application of)
S.S.H.I., LLC dba D.R. Horton) **FILE NO. 05 129068 SD**
36-lot planned residential development (PRD) and)
preliminary plat of 4.84 acres with concurrent rezone)
from R-9,600to R-7,200)

DATE OF DECISION: July 19, 2006

PLAT/PROJECT NAME: *Acadia*

DECISION (SUMMARY): The proposed 36-lot planned residential development of 4.84 acres with concurrent rezone from R-9,600 to R-7,200 is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 9512 27th Avenue SE, Everett, Washington.

ACREAGE: 4.84 acres

NUMBER OF LOTS: 36

AVERAGE LOT SIZE: 3,443 square feet

MINIMUM LOT SIZE: 2,975 square feet

DENSITY: 7.3 du/ac (net)

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

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Silver Lake Water & Sewer District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 1

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 March 17, 2006. (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 13, 14 and 15)

A SEPA determination was made on June 6, 2006. (Exhibit 12) No appeal was filed.

The Examiner held an open record hearing on July 11, 2006, the 81st 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 July 11, 2006 at 2:02 p.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, S.S.H.I., LLC dba D.R. Horton, was represented by Jennifer Steig and attorney Duana Kolouskova. Snohomish County was represented by Paul Lichter of the Department of Planning and Development Services.
3. One prehearing letter (Exhibit 18) was received from Eldon and Doris Coroch, who reside at Tower Division 2, Lot 15 with their entire 130-foot back yard width on the western boundary of the proposed Acadia. Their concerns were supported by testimony of their neighbor, Sandra Kjos. Laurie Howe testified as a citizen concerned in general about the impact of planned residential developments on established communities and woodlands.

The hearing concluded at 3:01 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 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. The applicant filed an application for a preliminary plat and planned residential development and a concurrent rezone from R-9,600 to R-7,200 on 4.84 acres in order to construct 36 single-family dwellings thereon. The subject site is addresses 9512 27th Avenue SE, Everett. Lot sizes would average 3,443 square feet with the smallest lot being 2,975 square feet. The net density would be 7.3 dwellings per acre. That density is consistent with the density provisions of the County's GMA-based zoning regulations under Subtitle 30.2 based on 4.84 acres. No critical area is on or within 100 feet of the subject site.
4. Doris and Eldon Coroch have lived for 40 years on the lot which abuts 130 feet of Arcadia's western boundary. Throughout those four decades, dense trees on the Acadia site have provided backyard seclusion for the Corochs, including privacy for the deck off their master bedroom. Their back lawn stretches 30 feet from their house to their rear property line, where they now have a solid, six foot wooden fence. Doris Coroch points out that at least three of Acadia's two-story homes will have views into her backyard. Eldon Coroch testifies that he is 75 years of age and that he considers the 10 to 15-foot deep backyards proposed for Acadia to be "obscene". The Coroch's neighbor, Sandra Kjos, concurs and adds that privacy is an extreme issue in this case and a six-foot tree does not screen a 25-foot home.
5. Exhibit 25 is the Coroch's packet of an appraiser's estimate of a 10% loss of value due to the loss of privacy with attached photographs of the back yard and potential landscaping. The appraiser writes:

"Some of the loss in value could be mitigated with a natural screen of trees along the property line, which could be done with considerable expense."

That quoted language is broad enough to refer to trees planted on the Coroch's side of the property line as well, perhaps at the applicant's expense, but no offer of such has been announced and the Examiner does not find substantial evidence to support requiring such off-site planting as a condition upon approval in view of the existing code provisions.

6. Proposed Lots 18, 19 and 20 are those which significantly abut the Coroch fence. The applicant points to its proposal to build there a new six-foot high, solid wood fence and to augment it with double the number of visual buffering trees required by Snohomish County's Code at 30.42B.125. That Code section requires either 15-foot width of perimeter landscaping here or a six-foot high solid fence but not both. However, the applicant is providing functionally the equivalent of both by combining the fence with six Vanderwolf's Pine of 6-7 feet height at planting, as selected by a landscape architect. The Coroch's Exhibit 25 pictures and describes alternative species but is not persuasive as to why any of those alternatives are preferable to the proposed Vanderwolf's Pine. The depth of the plantings will not be a full 15 feet at all points because the articulated rear setbacks of the homes vary from 10-15 feet and at

least some backyard space is sought to be maintained for the proposed homes. In summary, a balance is struck between providing at least minimal year yard area for each Acadia home while providing at least some view softening for Acadia's long-term neighbors such as the Conochs.

7. The Conochs argue that the intersection of 96th Street SE and 19th Avenue SE should be signalized at this applicant's expense in order to handle more safely the increased traffic at the McDonalds Restaurant there due to recent development in the vicinity. The record shows 309 average daily trips attributable to Acadia, of which 24 will be in the a.m. peak hour and 33 will be in the p.m. peak hour. That volume of traffic added did not persuade the Department of Public Works to recommend signalization here, nor does that requirement have the requisite nexus to the impact of this project.
8. 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 that review, the DPW has determined that the development is concurrent and has no objection to the request subject to various conditions.
9. The Conochs argue that the applicant should offer hook-up to its public sewer system for neighbors such as the Conochs. In response, the applicant points out that Acadia is in the service area of the Silver Lake Water and Sewer District but that service area ends at the common boundary with the Conochs, who are in the service district of another District. The Conochs point out that one (maybe two) of Conoch's 40-year-old septic drain fields lies within three feet of the common boundary with Acadia.
10. 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.
11. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions. The Everett School District reports that elementary students will walk to Jefferson Elementary, middle schoolers will walk to Eisenhower Middle school and high schoolers will be picked up by bus at the entrance to Acadia. Thus, no off-site pedestrian facilities are required.
12. 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).
13. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
14. Public water and sewer service will be available for this development through the Silver lake Sewer and Water District. Electrical power is also available.
15. The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, which is the case here.

16. 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.

17. The application complies with the planned residential development provisions of SCC 30.42B as to lot yield, design criteria in general and, in particular, design criteria as to open space, landscaping, tree retention, drainage, transportation infrastructure, bulk regulations and specific housing types.
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. 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.
20. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
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 evidence was submitted of noncompliance with the requirements of Chapter 30.42A, the application is presumed to meet these requirements.

5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

A. The PRD official site plan/preliminary plat received by PDS on March 17, 2006, (Exhibit 3A) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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. A detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 3E and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.

iii. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. 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.

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 Everett School District No. 2 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 2 existing parcels. Lot(s) 1 through 2 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:

\$2,292.57 per lot for mitigation of impacts on county roads paid to the County,

\$142.09 per lot for mitigation of impacts on state highways paid to the County.

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.

- iii. “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, picnic areas, recreation trail system, viewing platform, drainage facilities, 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.”
- iv. The developer shall pay the County \$1,244.49 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.

D. Prior to recording of the final plat:

- i. The features on the approved TDM plan shall be constructed/installed.
- ii. Urban frontage improvements shall be constructed along the parcel’s frontage on 27th Ave SE specifications of the DPW.
- iii. 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 3E) shall be implemented.

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

Nothing in this recommendation 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.

- 6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a 36-lot planned residential development subdivision on 4.84 acres with a concurrent rezone from Residential-9,600 to Residential-7,200 are **CONDITIONALLY APPROVED**, subject to compliance with the conditions set forth in Conclusion 5, above.

Decision issued this 19th day of July 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 **JULY 31, 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 **AUGUST 2, 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: Paul Lichter
Department of Public Works: Mark Brown

<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>
