

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

In the Matter of the Application of)	
)	FILE NO. 06 101752 SD
BTC IV, LLC)	
)	
Preliminary plat for an 11-lot subdivision utilizing lot)	
size averaging)	

DATE OF DECISION: October 20, 2006

PLAT/PROJECT NAME: *Amber Skyline, Division 7*

DECISION (SUMMARY): The requests for a preliminary plat for an 11-lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the west side of 87th Avenue SE, approximately 250 feet north of the intersection of 87th Avenue SE and 12th Street SE, Everett, Washington.

ACREAGE: 2.24 acres

NUMBER OF LOTS: 11

AVERAGE LOT SIZE: 4,728 square feet

MINIMUM LOT SIZE: 4,003 square feet

DENSITY: 4.9 du/ac (gross)
 8.5 du/ac (net)

ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water: Snohomish County PUD
Sewer: Lake Stevens Sewer District

SCHOOL DISTRICT: Lake Stevens No. 4

FIRE DISTRICT: No. 8

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 13, 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 17, 18 and 19)

A SEPA determination was made on August 1, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on October 5, 2006, the 114th 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 October 5, 2006 at 1:04 p.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, BTC IV, LLC, was represented by Ron Thomas and by Duana Kolouskova, the applicant's attorney. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services.
3. One member of the public became a party of record: vicinity resident Tim Chonzena by letter of March 18, 2006 asserts that the County should observe 20th Street SE between 5:00 a.m. and 8:00 a.m. of week days and address that problem before approving any new developments.

The hearing concluded at 1:15 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 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 staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for an 11-lot subdivision using lot size averaging. Average weekday vehicle trips generated by 11 single-family dwellings (including traffic of one existing dwelling) are approximately 115, of which approximately nine (8%) are a.m. peak hour trips and 13 (11%) are p.m. peak hour trips.
4. Amber Skyline 7 is: (1) one of seven contiguous plats fused as if a jigsaw puzzle, (2) all proposed concurrently in time, (3) all proposed by the same applicant, (4) all sharing the same drainage plan, (5) all sharing the same vehicular access via 83rd Avenue SE to 20th Street SE, (6) all (with one exception) containing wetlands, and (7) all consolidated for notice and open record, predecision hearing before the undersigned Snohomish County Deputy Hearing Examiner. However, the Environmental Checklist for this application (Exhibit 2) does not disclose any of the six other adjoining applications.
5. It is undisputed that such piecemeal submittal is lawful in Snohomish County. However, as a result of the "stand alone" segmentation, the record before the Hearing Examiner contains no analysis of the total proposal. The State of Washington's Department of Transportation by letter of April 13, 2006 (Exhibit 28) rejected the submitted traffic analysis and ordered that the applicant:

"... supplement the traffic study and detail the total impacts to the state highway system from all of Amber Skyline and not for each piece individually."

Although the record reports that agreement has been reached with the State as to traffic impacts, no document proving so is an exhibit of record.

6. The Examiner calculates that six plats of 12 lots each totals 72 lots plus a seventh plat of 11 lots equals 83 lots in the total Amber Skyline proposal. Each of those lots generates 9.57 average daily vehicular trips, for a total of 794 daily trips of which approximately 8% (64 trips) are a.m. peak-hour trips and 11% (87 trips) are p.m. peak-hour trips. (Those numbers are reduced only insignificantly when credit is deducted for Transportation Demand Management. Nor is credit appropriate for existing homes here. That credit is applied when determining impact fees payable. The Examiner calculates here trips actually leaving and entering the seven plats daily, not impact fees payable.)
7. Each of the seven plats, and all seven cumulatively, will add to Arterial Unit # 238, which is 20th Street SE between SR-204 and SR-9. That highway arterial is in arrears westbound now in the morning peak-hour (Exhibit 7, p.3). Each of the seven plats will add nine a.m. peak-hour trips and 13 p.m. peak-hour trips: a total of 22 peak hour trips per plat. Thus, seven plats add 94 daily peak hour trips. In summary, only by segmenting the total proposal can the Amber Skyline proposal be deemed "concurrent. (Exhibit 7, p. 3)

8. The Department of Public Works reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B 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. However, a memorandum from Mark A. Brown, Engineer III, Land Use, Department of Public Works dated April 19, 2006 (Exhibit 31), concluded that DPW could not make a favorable recommendation for this proposal due too then-pending discussions with the Washington State Department of Transportation.
9. No subsequent document alters that status. There is only the testimony of the applicant's (Barclay's North) representative Ron Thomas:

“We have no objection to paying our fair share of mitigation fees for this project and have agreed to do so with WSDOT. At this time, they have agreed with our mitigation offers.”
10. The applicant's attorney, Duana Kolouskova, verbally characterized the application as follows:

“The applicant has tried to be responsive in trying to put together something that is a little bit more logical than what we might have otherwise seen in the County in the past so we are trying to do something a little more progressive, hopefully addressing some of the concerns and maybe starting down a little bit of a new path.”
11. Critical to the Examiner's ability to approve the seven stand-alone plats herein is the testimony of Senior Planner Erik Olson in response to the Examiner's questioning about whether the intersection of 83rd Avenue S.E. and 20th Street S.E. would be signalized. His response is that the new high school and two developers (one is Barclay's) are obligated to signalize two intersections, one of which is the subject intersection. Mr. Olson states: “So those lights will be completed before this plat's ever recorded.”
12. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,361.22 for each new single-family home.
13. 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 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.
14. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
15. Approximately 23,460 square feet of a Category 2 wetland is located in the narrow west half of the property, which will be Tract 999. The wetland, buffer and NGPA make up the area of Tract 999. A 25-foot buffer has been established around that portion of the wetland located within the plat. A 15-foot buffer setback has been established around all buffers. The wetland and buffer are also located within the Open Space Tract 999. No construction or other impacts will take place within the wetland, the buffer or the 15-foot setback area from the buffer.

16. 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.
17. 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.
18. 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.
19. 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.
20. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A 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.
21. 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.
22. 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.
23. 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.
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 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.
5. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The preliminary plat received by PDS on June 13, 2006 (Exhibit 13) shall be approved plat configuration. SCC 30.41A.330 governs changes to the approved plat.
- 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 Lake Stevens School District No. 4 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot 1 shall receive credit."
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$3,033.33 per lot for mitigation of impacts on county roads paid to the county,
 - \$21.31 per lot for mitigation of impacts on state roads paid to the county,
 - \$5.02 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID # 9),
 - \$16.29 per lot for mitigation of impacts on state highways paid to the County, (WSDOT ID # 37)

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 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."

- iv. The developer shall pay the County \$1,361.22 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. Urban frontage improvements shall be constructed along the parcel's frontage on 87th Ave. SE to the satisfaction of the DPW.
- ii. Public road access shall be provided to the satisfaction of the DPW.
- iii. The features on the approved TDM plan shall be constructed and or installed.
- iv. 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 platator 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.

- 6. 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 an 11-lot subdivision utilizing lot size averaging provisions is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion No. 5 above.

Decision issued this 20th day of October, 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 **OCTOBER 30, 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 **NOVEMBER 3, 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: Erik Olson
Department of Public Works: 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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