

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
) **FILE NO. 06 125335 LU**
EAST EVERETT INVESTMENTS, LLC)
)
Conditional use permit to allow construction of East)
Everett/Cavalero Ridge sewer lift station)

DATE OF DECISION: September 7, 2006

DECISION (SUMMARY): The application for a conditional use permit to construct a sewer lift station is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

LOCATION: The subject property is located on the east side of SR-204 at approximately 16th Street, Everett, Washington.

ACREAGE: .24 acre

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: Lake Stevens Sewer District

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approval subject to conditions
Public Works: Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on April 11, 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 June 26, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on August 23, 2006, the 54th 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 23, 2006 at 11:03 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. Snohomish County was represented by Ed Caine of the Department of Planning & Development Services. The applicant, East Everett Investments LLC, was represented by Don Miller of G.W.C. Land Development Consulting. No member of the general public attended the hearing. One pre-hearing letter of concern (Exhibit 22) was received from Mary and George Larson concerning a leaking water line unrelated to the instant determination.
3. The record was held open until August 29, 2006 at the request of the applicant for receipt of a corrected legal description of the subject property. That corrected legal description was timely submitted (Exhibit 31).

The hearing concluded at 11:21 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.
3. The joint applicants, the Lake Stevens Sewer District, East Everett Investments and Burnstead Homes, filed an application for a conditional use permit to construct a sewage pumping station to be owned and operation by the Lake Stevens Sewer District. The subject site is located immediately east of SR-204 at about 16th Street, if extended. The lift station will serve current and future development in the vicinity.
4. The lift station footprint is an approximate 50-foot square, housing the pumping equipment. The lift station pad is at the base of a steep slope but the record indicates the small facility with retaining walls will not adversely impact that slope. The low site required for gravity flow to the site also eliminates almost all visibility of the project.
5. A Type 4 stream and Category 3 wetland are downslope of the pump station. The stream is intermittent, flowing westerly to Ebey Slough to enter the Snohomish River via an existing culvert under SR 524. The wetland buffer will be impacted by the proposal. Analysis by G. Krabbe Consulting, LLC and others in the record include a drainage study, grading and TESC plans, wetland mitigation plans, landscaping plans and geotechnical review.
6. The pumps will be powered by electricity with power outage redundancy provided by an eight-cylinder internal combustion engine powering a 250 KW standby generator. The generator will be housed in a sound attenuating enclosure and muffled to meet or exceed the noise standards of SCC Title 10.
7. The subject site is zoned R-9,600, in which such a facility is allowed as a conditional use. The surrounding area is zoned R-9,600 east of SR-204 and R-5 west of SR-204. Adjoining properties are being developed with single-family residences.
8. The request will not generate impacts to the County's park system or the school system.
9. Vehicular access to the pump station will be from the north through Burnstead Construction's "Cavalero Ridge" emerging subdivision. The project will produce less than one daily vehicular trip. The DPW has determined that the development is concurrent and has no objection to the request subject to various conditions.
10. 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.
11. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.
12. Examination of the proposal in view of the CUP standards establishes from the evidence of record that the standards are met and no adverse affects will occur as a result of allowing a sewer lift station.
13. 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.
14. 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 specific 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, the permitted density and the applicable design and development standards.
4. The request for a sewer lift station as described in the application and related documents should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The conditional use permit site plan received by PDS on June 30, 2006 (Exhibit 11-A) shall be the approved conditional use permit configuration. Changes to the approved plat are governed by SCC 30.41C.110.
- B. The conditional use permit landscape plan received by PDS on June 30, 2006 (Exhibit 11-H and 11-I) shall be the approved conditional permit configuration. Changes to the approved plat are governed by SCC 30.41C.110.
- C. The preliminary landscape plan (Exhibit 11H and 11-I) shall be implemented in conjunction with the subsequent construction of the lift station. All required landscaping shall be installed in accordance with the approved landscape plan.
- D. The wetland mitigation plan (Exhibit 11F and 11G) shall be implemented in conjunction with the subsequent construction of the lift station.
- E. A completed land use binder shall be recorded and a copy of the recorded document shall be provided to PDS for inclusion in the record.
- F. All development activity shall conform to the requirements of SCC 30.63A and SCC 30.63B.

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.

5. 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 conditional use permit for a sewer lift station is hereby **CONDITIONALLY APPROVED**, subject to the conditions set forth in Conclusion 4, above.

Decision issued this 7th day of September, 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 18, 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 21, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Ed Caine
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.