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REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: April 4, 2007
PLAT/PROJECT NAME: *CANTON RIDGE*
APPLICANT/
LANDOWNER: Property Ventures, LLC
FILE NO.: 04 109198-001 SD
TYPE OF REQUEST: Major modification to a preliminary plat
DECISION (SUMMARY): **APPROVE** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 17425 Sunset Road, Bothell, WA
ACREAGE: 13.97 acres
DENSITY: 5.79 du/ac (gross)
7.54 du/ac (net)
NUMBER OF LOTS: 81
AVERAGE LOT SIZE: 4,023 square feet
MINIMUM LOT SIZE: 3,220 square feet
OPEN SPACE: 19,440 square feet
ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (ULDR)
Subarea Plan: Mill Creek East UGA Plan
Subarea Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed a Master Application on October 30, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit March 15, 2007, in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 20, 21 and 22)

A SEPA determination of non-significance was made on February 15, 2007. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on March 20, 2007, the 34th 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 March 20, 2007 at 11:00 a.m.

1. The Examiner indicated that he had read the PDS staff report [and](#), reviewed the file and therefore had a general idea of the particular request involved.

The hearing concluded at 11:07 a.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. Based on all of the evidence of record, the following Findings of Fact are entered:
2. 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.
3. 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 unless otherwise stated below. The proposal is to make a major modification of a previously approved preliminary plat.

4. The property lies east of Sunset Road and is bisected by 174th Street SE. A north/south power line easement occupies a portion of the east side of the property which will provide open space but without any recreational improvements.
5. Applicant will pay impact fees for county roads, state highways and Mill Creek streets, parks and schools.
6. Frontage improvements and dedications will be required on all abutting streets.
7. The proposal will generate 691 average daily vehicle trips, with 72 in the a.m. peak hours and 54 in the p.m. peak hour. The proposal was determined to be concurrent as of December 14, 2006.
8. School children will have sidewalks to walk to and surface waiting areas for the school bus.
9. Storm water will be detained in two underground detention vaults, and released to an existing storm drainage system in Sunset Road.
10. There are no wetlands, streams or other critical areas on the site.
11. Applicant has proposed Planned Residential Development (PRD) which requires satisfaction of design criteria for open space, landscaping, tree retention, drainage retention, roads, access, circulation, pedestrian facilities, parking, bulk, housing types and official site plan.
12. Any Finding of Fact in this Report and 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.
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. 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 Pro Tem on the application is as follows:

The request for approval of a **MAJOR MODIFICATION** to a previously approved **PRELIMINARY PLAT** is hereby **APPROVED**, subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The Preliminary Plat received by PDS on January 18, 2007 (Exhibit 14), shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on January 18, 2007 (Exhibit 14) and Detailed Landscape and Recreation approved per condition B. i., below, shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. 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 16 and with all required landscape standards for perimeter, streetscape and open space treatment.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. In accordance with SCC 30.66B.170 (6), and as offered in the applicant’s letter of October 26, 2006, extension of the northbound right-turn lane on 35th Avenue SE at Seattle Hill Road to a total storage length of 500 feet (or less if approved by DPW); construction of a westbound right-turn lane on Seattle Hill Road at 35th Avenue SE to a storage length of 100 feet; construction of northbound, eastbound and westbound right-turn lanes that provide 100 feet of storage each at the intersection of 35th Avenue SE and 180th Street SE; and signal optimization at the intersections of 35th Avenue SE and 180th Street SE and 35th Avenue SE and Seattle Hill Road; shall have been completed or under contract prior to the issuance of building permits for Lots 21 through 81 and must be complete prior to approval for occupancy or final inspection. Building permits for a total of 21 lots (Lots 1 through 21) may be issued prior to the completed or contracted work. The County Transportation Improvement Plan (TIP) includes some of those improvements. They are fully funded and expected to be complete within six years. Any of the offered improvements listed above that are not part of the TIP must be completed by the applicant as is detailed above.
 - ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:
 - \$1,927.84 per lot for mitigation of impacts on county roads paid to the county,
 - \$78.50 per lot for mitigation of impacts on state highways paid to the county,
 - \$157.83 per lot for mitigation of impacts on Mill Creek streets paid to the city.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. 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. No lot shall have direct access on Sunset Road.
- iv. 5 feet of right-of-way shall be dedicated along the property frontage on Sunset Road, to total 35 feet from the right-of-way centerline.
- v. 10 feet of right-of-way shall be dedicated along the property frontage on 174th Street SE, to total 30 feet from the right-of-way centerline, on both sides of 174th Street SE.
- vi. Dedication of additional right-of-way that is tangent to the ultimate right-of-way on Sunset Road and 174th Street SE sufficient to construct 35-foot radius returns is required.
- vii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-109198-001 SD.
- viii. 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 any critical areas and their buffers, open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, 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.
- ix. The dwelling units within this development are subject to park impact fees in the amount of \$918 per newly approved dwelling unit, as mitigation for impacts to the North Creek park service area of the County parks system in accordance with SCC 30.66A.
- x. The lots within this subdivision will be subject to school impact mitigation fees for the Everett 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 5 existing lots. Lots 1-5 shall receive credit.
- xi. In accordance with SCC 30.42B.150(1)(d), floor plans and street elevations of the proposed single family homes in the plat shall be designed to reduce the visual impact of the garage doors and emphasize the entry living space.

D. Prior to recording of the final plat:

- i. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. 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.
- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.

- 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(5)(b).
- iv. Urban standard frontage improvements shall be constructed along the property frontage on Sunset Road and on both sides of 174th Street SE, 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]
- v. Two 10-foot x 15-foot paved student bus-waiting areas, located behind the sidewalk shall have been completed. One would be located on the north side of 174th Street SE at 43rd Avenue SE in Tract 995; and the second on 43rd Avenue SE, north of 175th Street SE, adjacent to Lot 38. [RCW 58.17.110]
- vi. An agreement to terminate the Temporary Dwelling (File number 97-110039 TD – Land Use Permit Binder AF# 9508240001) on parcel 270509-003-005-00 shall be executed by the applicant and recorded with the County Auditor.

E. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

Decision issued this 4th day of April, 2007.

Gordon Crandall, Hearing Examiner Pro Tem

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 **April 16, 2007**. 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 **April 30, 2007** 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: Monica McLaughlin

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.