

FOR OFFICE USE ONLY:  
DB ID: 576739

## **REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: April 17, 2007

PLAT/PROJECT NAME: *EAST CREEK*

APPLICANT/  
LANDOWNER: Spadafora Development, LLC

FILE NO.: 04 110654-02 SD

TYPE OF REQUEST: **MAJOR REVISION** of a 21 lot **PLANNED RESIDENTIAL DEVELOPMENT** (PRD) to a 42 lot PRD with **REZONE** from Residential-9600 (R-9600) to Residential-7200 (R-7200) of an additional 2.44 acres

DECISION (SUMMARY): **APPROVED** subject to conditions

### **BASIC INFORMATION**

GENERAL LOCATION: The property is located at 17322 Sunset Road, Bothell, WA

ACREAGE: 5.9 acres

DENSITY: 7 du/ac (gross)  
9.48 du/ac (net)

NUMBER OF LOTS: 42

AVERAGE LOT SIZE: 3,567 square feet

MINIMUM LOT SIZE: 3,094 square feet

ZONING: R-7200 & R-9600 (current)  
R-7200 (proposed)

#### **COMPREHENSIVE PLAN DESIGNATION:**

General Policy Plan Designation: Urban Low Density Residential

#### **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 November 6, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on April 10, 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 23, 2006. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on April 10, 2007, the 47<sup>th</sup> 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 April 10, 2007 at 9:00 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. There was no opposition to the proposal.

The hearing concluded at 9:14 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.

4. The proposal is for a major modification to change the previously approved preliminary plat of the same name to a PRD and enlarge the boundary to include another parcel to the north.
5. This added parcel is to be rezoned to R-7200, an approved GPP implementing zone, which will match the surrounding approved preliminary plats to the north, east and south. (To the west is a large existing, unimproved, County park site.)
6. The 42 lot PRD will dedicate 20% of its gross site area as permanent open space, or approximately 53,330 square feet.
7. Approximately 10,471 square feet of this permanent open space will be improved for active recreation. These improvements will consist of grassed play areas, a tot lot with play equipment for younger children, benches and a picnic table.
8. The majority of the open space will be located in the westerly portion of the site, adjacent to the County park site.
9. The underground stormwater detention vault will be located in the southwest corner of the site. The lid of the detention vault will be covered with grass and the tot lot will also be placed in this flat area.
10. The site currently contains 42 significant trees. Fourteen of these trees will be removed for site development. A total of 152 trees are proposed to be planted in addition to landscaping groundcovers and shrubs.
11. 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. The criteria for approval of the rezone are satisfied.
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 requests for a **MAJOR REVISION** of a previously approved **PRELIMINARY PLAT** to a 42 lot PRD and **REZONE** from R-9600 to R-7200 are 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 16), 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 16) 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 18 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. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:  
\$2,196.25 per lot for mitigation of impacts on county roads paid to the county,  
\$118.57 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.
  - ii. Five feet of right-of-way shall be dedicated to Snohomish County, parallel and adjoining the existing right-of-way along the parcel's frontage on west side of Sunset Road along with a 35 foot radius right-of-way at the northwest and southwest corners of 174<sup>th</sup> Street SE and Sunset Road, on the final recorded plat [SCC 26B.55.060].
  - iii. The temporary turnarounds located at the end of Road A and Road B shall be removed and the frontage restored by the adjacent property owner when these roads are extended to the north.
  - iv. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-110654-000-02 SD.
  - v. 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.

- vi. 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.
- vii. 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.
- viii. 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 frontage improvements shall be constructed along the parcel's frontage on Sunset Road to the specifications of the DPW [SCC 30.66B.410].
- v. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- vi. A 10-foot by 15-foot hard surfaced school pedestrian waiting area located behind the sidewalk shall have been constructed in the vicinity of the entrance of the development and Sunset Road.
- vii. Temporary turnarounds shall be constructed at the terminus of Road A and Road B to the specifications of DPW.

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 17th day of April, 2007.

---

Gordon Crandall, Hearing Examiner Pro Tem

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
---

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, 2<sup>nd</sup> 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 27, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **May 1, 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.