

**CORRECTED
REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: January 5, 2007

DATE OF CORRECTED
DECISION: January 23, 2007

PLAT/PROJECT NAME: *PARKLAND PLACE*

APPLICANT/
LANDOWNER: Parkland Place, LLC

FILE NO.: 04 119989 SD

TYPE OF REQUEST: **REZONE** from Residential-8400 (R-8400) to Residential 7200 (R-7200),
PRELIMINARY PLAT, and a **BOUNDARY LINE ADJUSTMENT (BLA)**

DECISION (SUMMARY): **APPROVED** subject to **Preconditions** and **Conditions**

BASIC INFORMATION

GENERAL LOCATION: The property is located east of the Bothell-Everett Highway off of 25th Avenue SE
near Silver Lake, Everett, WA

ACREAGE: 8.38 acres

NUMBER OF LOTS: 39

AVERAGE LOT SIZE: 5,015 square feet

MINIMUM LOT SIZE: 3,930 square feet

DENSITY: 4.65 du/ac (gross)
8.69 du/ac (net)

ZONING: CURRENT: R-8,400
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:

Urban Medium Density Residential (6-12 du/ac) north two-thirds of the site
Urban Low Density Residential (4-6 du/ac) south one-third of the site

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approval with preconditions and conditions

Public Works (DPW): Approval with preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on May 11, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 12, 2006 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 15, 16 and 17)

A SEPA determination was made on October 18, 2006. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on December 14, 2006, the 89th 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 December 14, 2006 at 3:02 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. The applicant, Parkland Place, LLC, was represented by Alan Clark. Snohomish County was represented by David Radabaugh of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works.

The hearing concluded at 4:06 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:

1. Kyle Clark and Parkland Place, LLC seek approval of an application:
 - A) Rezone of an 8.38 acre site east of 25th Avenue SE near Silver Lake (Section 29, Township 28N, Range 5E, WM) from R-8400 to R-7200;
 - B) Boundary Line Adjustment;
 - C) Preliminary Plat for 39 single-family residential lots.
2. The site is L-shaped and contains two Category 3 wetlands and a Type 4 stream. A drainage detention pond already exists on the site, having been completed for the Clemenson's farm plat on the west side of 25th Avenue SE.
3. Surrounding zoning and land uses include LDMR and single-family residences to the north and east, and R-8400 and single-family residences to the south. The Clemenson's farm subdivision is located to the west across 25th Avenue SE.
4. Storm water for the plat will be routed to the existing detention pond and an additional wet vault. All aspects of the storm water control system, including release, will be determined during full drainage plan review.
5. A BLA is proposed to establish the external boundary of the plat, which will exclude an existing residence from the proposed plat. The BLA will decrease the size of that lot to less than 50% of its original footprint, so it must be considered by the Examiner as part of this application.
6. The plat will have an internal road system that will connect to 25th Avenue SE. None of the lots will have direct vehicular access to 25th Avenue SE.
7. The project will generate an average of 335 new daily vehicle trips, with 26.25 a.m. and 35.35 p.m. peak hour trips. This will not impact any arterial unit in arrears, cause any unit to fall into arrears, nor will it impact any designated ultimate capacity arterial units. The project was certified as concurrent in the final recommendation of the DPW.
8. The applicant will pay impact fees for schools, parks, county roads, state highways, Mill Creek city streets, and for Transportation Demand Management.
9. School children from the plat will ride busses to school. Safe walking conditions will be provided by sidewalks to the entrance of the development. Urban standard frontage improvements to City of Everett standards are required on 25th Avenue SE, which is within the City of Everett. The applicant will dedicate 15 feet of additional r/w to Everett.
10. The southern 1/3 of the site is designated for Urban Low Density Residential (ULDR) uses, and the northern 2/3 is designated for Urban Medium Density Residential (UMDR) uses. The site is in an Urban Growth Area (UGA). The R-7200 zone is one of the implementing zones for these land use designations.

11. A Determination of Nonsignificance (DNS) was issued for the proposal on October 18, 2006. There was no appeal.
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. There are no changes to the recommendations of the staff report.
2. SCC 30.41E.100 provides the 11 criteria for approval of a Boundary Line Adjustment (BLA). Staff has analyzed the proposed change and concludes that all of the criteria have been satisfied. The Examiner concurs. The BLA should be approved.
3. The rezone approval criteria are set forth in SCC 30.42A.100. Staff concludes that the proposed rezone is consistent with the comprehensive plan and bears a substantial relationship to the public health, safety and welfare and should be approved. The Examiner concurs.
4. The criteria for approval of a preliminary plat are contained in Chapter 30.41A and RCW 58.17.100-120 and 195. Staff's analysis of these criteria concludes that the proposal satisfies these standards and should be approved. The Examiner concurs.
5. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request for a REZONE of 8.25 acres from Residential-8400 to Residential-7200; along with the PRELIMINARY PLAT of *PARKLAND PLACE*, and a Boundary Line Adjustment are hereby APPROVED, subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS

- A. A current plat name reservation shall be obtained.
- B. Updated letters of water and sewer availability shall be obtained.
- C. Comment from the Snohomish Health District recommending approval of the Boundary Line Adjustment shall be obtained.
- D. The preliminary plat shall be revised to accomplish all of the following:
 - i. Topography shall be shown at either 2 foot or 5 foot contours.

- ii. The plat map shall be stamped by a licensed surveyor.
- iii. Existing structures on the plat site shall be shown. If existing structures are to be removed, then this shall be noted on the preliminary plat map.
- iv. Easements recorded under Snohomish County Auditor's File Numbers 200603210526 and 200603210527 shall be shown on the preliminary plat map. The plat map shall be modified such that the easements are not within buildable portions of any lot, within a detention pond area, or landscape area. If either or both of the easements are to be extinguished prior to recordation of the final plat, then this shall be noted on the revised preliminary plat.
- v. The required landscape area around the entire perimeter of the detention pond (excluding detention pond maintenance access only) shall be shown on the preliminary plat map. The plat map shall be revised in a manner approvable by PDS to accommodate this landscape area.¹

CONDITIONS

- A. Except as modified by preconditions,² the preliminary plat dated October 25, 2006 (Exhibit 19) shall be the approved plat configuration. 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. 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.
 - iii. A grading permit, to include a Temporary Erosion Sedimentation Control Plan (TESCP), issued pursuant to the UDC Chapter 30.63.B shall have been obtained for any on-site grading.
 - iv. A full drainage plan shall have been submitted and approved pursuant to the UDC Chapter 30.63.A. A concurrent review by the City of Everett will be required.
 - v. The platlor shall provide a landscape plan demonstrating that the detention facility landscaping meets the requirements of SCC 30.25.023.
- 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 4 existing parcels. Lots 1, 13, 30, and 31 shall receive credit."

¹ Scrivener's error. Preconditions D.i., D.ii. and D.iii. were inadvertently omitted from the Decision originally issued January 5, 2007. (Exhibit 35)

² Condition A. was modified per the Department of Planning and Development Services (Exhibit 35)

- ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,102.74 per lot for mitigation of impacts on county roads paid to the county,

\$334.95 per lot to Snohomish County for the Washington State Department of Transportation (WSDOT) as fee mitigation of project impacts on state highways,

\$136.92 per lot for mitigation of impacts on the City of Mill Creek streets paid to the city.

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 \$1,244.49 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. Construction of urban standard frontage improvements shall have been constructed and approved by the City of Everett.
- ii. Additional right-of-way shall have been deeded to the City of Everett such that 30 feet of right-of-way exists from the right-of-way centerline along the development's entire frontage.
- iii. 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.

iv. Easements recorded under Snohomish County Auditor's File Numbers 1904101, 2355437, 7609270082, 7612010274, 7706070207, and 200006150481 shall be extinguished or modified so that they do not impact the subject property.

v. The associated Boundary Line Adjustment (Exhibit 34) shall be recorded.

E. In conformity with applicable standards and timing requirements:

i. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. 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.

Decision issued this 5th day of January, 2007.

Corrected Decision issued this 23rd day of January, 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 **January 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 **January 19, 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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the

instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than January 8, 2008.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)

Staff Distribution:

Department of Planning and Development Services: David Radabaugh/Norm Stone

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.
