

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
C & B INVESTMENTS NW, LLC)
)
Rezone from Residential-9,600 (R-9,600) to)
Residential-7,200 (R-7,200) with a 36-lot planned)
residential development (PRD) and a preliminary)
subdivision on 4.91 acres)

FILE NO. 05 125213 SD

DATE OF DECISION: January 24, 2007

PLAT/PROJECT NAME: *Windstone*

DECISION (SUMMARY): The rezone, the planned residential development and the preliminary subdivision are **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located on the west side of Meadow Road, opposite 154th Place SW about one mile east of Mill Creek, Washington.

ACREAGE: 4.91 acres

NUMBER OF LOTS: 36

AVERAGE LOT SIZE: 3,237 square feet

MINIMUM LOT SIZE: 2,633 square feet

DENSITY: 7.3 du/ac (gross)
9.7 du/ac (net)

ZONING: CURRENT: R-9,600
PROPOSED: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

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 September 20, 1005. (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 26, 27 and 28)

A SEPA determination was made on October 24, 2006. (Exhibit 25) No appeal was filed.

The Examiner held an open record hearing on January 9, 2007, the 125th 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 January 9, 2007 at 11:01 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area and, therefore, was generally familiar with the application.
2. The applicant, C & B Investments NW, LLC, was represented by Ry McDuffy. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services. Vicinity resident Susan Worthy is the only member of the general public who testified at the hearing.

3. Pre-hearing letters of concern or opposition were submitted by members of 14 vicinity households. Of those 14, four (Lynn Blackburn, Joyce Evers, Robert Wiese and Susan Worthy) submitted individual letters. A form letter was submitted by residents of eleven households in Darben Place, which abuts the subject site on the south: Steve and Maria Bighaus, Wayne Gray, Denise Griffen, Qyn Humphreys, Rodney D. Hunter, Joseph O'Dore, Edgar J. Overvold, Lanny Quast, Alfred J. Singer, Patty Walker and Susan Worthy (Exhibits 31 – 44). The applicant filed a written response to those letters (Exhibit 56).

The hearing concluded at 11:46 a.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 applicant, C & B Investments NW, LLC, filed an application for a rezone of approximately five acres from R-8,400 to R-7,200 in order to develop a 36-lot short subdivision as a planned residential development. No critical area (steep slope, wetland, or stream) is on or near the site.
3. The PDS staff report has 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 unless otherwise stated below.
4. Neighbors' concerns include lot size and density, vehicular and pedestrian/bicyclist safety, noise, sanitary sewer, storm drainage, street lighting, privacy and safety issues regarding a proposed pedestrian trail along portions of the subject site's south property line, preservation of an existing access and utility easement, and impacts of a proposed parking lot and detention pond in that same vicinity. The applicant responded to those concerns by letter of January 2, 2007 (Exhibit 56). The staff report (Exhibit 55) addresses those citizen concerns also. The Hearing Examiner has particularly examined impacts on abutting parcels, especially along the pedestrian trail on the south border. Those are the properties owned by Blackburn, Griffen, Humphreys, O'Dore and Worthy.
5. Based on the preponderance of the evidence of record, the Examiner finds as fact (1) that the proposed access from Meadow Road aligned with 154th Place SW is appropriate, (2) that no other access is reasonably feasible, largely due to Interstate Route 5 abutting on the west, (3) that the subdivision will not impair vehicular access to the Blackburn parcel immediately west of the Heath parcel, (4) that the pedestrian facilities proposed meet the Edmonds School District requirements for safe walking to all school busses, (5) that the applicant's installation of street luminaires along the Meadow Road frontage meets this applicant's fair share requirement as to street lighting, and (6) a series of deviations granted by the Department of Public Works tailor the subject site's infrastructure to the specifics of the site and environs. (See Exhibit 55, pgs. 4, 5.) The proposed plat will generate 325 average daily vehicular trips, of which 25 will be morning peak-hour trips and 34 will be p.m. peak-hour trips.

6. Concerning sanitary sewers and storm drainage, the record shows that the proposed lots will not have septic systems but, instead, will be served by the sewers of the Alderwood Water and Sewer District. Storm drainage will be tightlined to a detention vault with metered outfall so that post-developed discharge from the subject site does not exceed current discharge. Thus, no adverse impacts will occur to any neighboring septic drainfields or wells.
7. As to noise impacts, the record shows that a required noise study was conducted by JR Engineering (Exhibit 22). That report describes how the proposed dwellings must be built in order to reduce interior noise in those homes to Day/Night levels of 40 dB(A) as required by Snohomish County. The evidence of record does not demonstrate that replacement of trees by houses will worsen freeway noise impacts on the surrounding community.
8. A pedestrian trail is proposed along the southern boundary of the plat. The trail is lawful as proposed without fencing or vegetative screening. At least four neighbors who abut the plat adjacent to the trail express concern about loss of privacy and safety concerns due to potentially heavy use of the trail because it is the route to the existing and popular Interurban trail to the west. Neighbors Blackburn and Worthy express particular and detailed concern. In response, the applicant offered to pay up to one half of the cost of erecting a sight obscuring fence along those neighbors' property lines abutting the plat. The applicant is not required by law to do so. Consequently, the Examiner chooses not to formalize the applicant's offer into a condition upon approval. Rather, the applicant is taken at his word and the Examiner expects a good faith negotiation between the applicant and at least neighbors Blackburn, Humphreys, O'Dore and Worthy as to fencing at the property lines.
9. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.
10. The DPW reviewed the request with regard to traffic mitigation and road design standards. That 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 determined that the development is concurrent and has no objection to the requests subject to specific conditions.
11. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions.
12. Chapter 30.42A covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) The proposal is consistent with the comprehensive plan;
- (2) the proposal bears a substantial relationship to the public health, safety, and welfare;
and
- (3) where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

13. 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.
14. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
15. Public water and sewer service will be available for this development as well as electrical power.
16. The subject property is designated Urban Low Density Residential (ULDR: 4-6 du/ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Low Density Residential designation covers various sub-area plan designations, which allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7,200, which is the case here.
17. 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.
18. 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 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.
3. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision 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.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan. Because no substantial evidence was submitted of noncompliance with the requirements of Chapter 30.42A, the application is found to meet these requirements.

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 rezone from Residential-9,600 to Residential-7,200 with a 36-lot Planned Residential Development and preliminary subdivision on 4.91 acres **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on April 10, 2006 (Exhibit 24) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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. 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 5 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iii. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. 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. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.
- 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 Edmonds School District No. 15 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 three existing parcels. Lots 1 through 3 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:

\$2,101.03 per lot for mitigation of impacts on county roads paid to the county,

\$73.59 per lot for transportation demand management paid to the county,

\$170.74 per lot for mitigation of impacts on the City of Mill Creek streets paid to the city.

\$193.98 per lot for mitigation of impacts on State road DOT-11 paid to the county.

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. Ten(10) feet of property shall be dedicated on the west side of the existing 20 feet of right-of-way, to total 30 feet of right-of-way east of the Meadow Road right-of-way centerline.

- iv. "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 open play areas, picnic areas, recreation trail system, viewing platform, drainage facilities, 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."

- v. The developer shall pay the County \$1244.49 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. Urban standard frontage improvements shall be constructed along the property frontage with Meadow Road unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. 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.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 5) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- ii. The noise mitigation measures described in the JR Engineering Windstone Acoustic Study dated February 3, 2006 (Exhibit 22) shall be implemented as part of house construction.

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 24th day of January, 2007.

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 **FEBRUARY 5, 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 **FEBRUARY 7, 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: Bob Pemberton / Ann Goetz

<p>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.</p>
