

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: June 4, 2007

PROJECT NAME: *NELSON JOHNSON 201*

APPLICANT/
LANDOWNER: Underwood-Nelson Development

FILE NO.: 05 126355 LU

TYPE OF REQUEST: Official site development plan approval for the construction of four warehouse/manufacturing/industrial buildings on a 10 acre site

DECISION (SUMMARY): APPROVED subject to Preconditions and Conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 20102 Broadway Avenue, Snohomish, WA

ACREAGE: 10

ZONING: Planned Industrial Park (PIP)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Industrial (Maltby UGA)

UTILITIES:

Water/Sewage: Cross Valley Water Association

SCHOOL DISTRICT: N/A

FIRE DISTRICT: No. 103

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services (PDS): Approve with conditions

INTRODUCTION

The applicant filed the Master Application on August 21, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on May 28, 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 was made on April 20, 2007. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on May 29, 2007, the 80th 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 May 29, 2007 at 10:06 a.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.

The hearing concluded at 10:21 a.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of the hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. Two letters were received with concerns for traffic impacts on 87th Avenue SE. Applicant must dedicate 45 feet of additional right-of-way on 87th Avenue SE, but will not take access from that street. It will be fenced, and all access will be from Broadway Avenue or from the development to the north. Applicant is in the process of obtaining easement rights to gain access to Broadway Avenue, as another owner owns a 25 foot strip between the site and Broadway Avenue.
4. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B 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 has determined that the development is concurrent and has no objection to the requests subject to various conditions.

5. 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 (Title 24 SCC).
6. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Any existing on-site septic systems shall be abandoned.
7. Public water and sewer service will be available for this development as well as electrical power.
8. 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. Applicant proposes to construct four warehouse/manufacturing/industrial buildings on this 10 acre site. Maltby Park is located immediately to the south of the site. Properties to the north, south and east are zoned Industrial Park (IP) and developed with various commercial or industrial uses, except for Maltby Park. Properties to the west across 87th Avenue SE are zoned and used for residential purposes.
9. The aerial photograph (Exhibit 16) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
10. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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 certain conditions, including payment of applicable impact fees.
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. The request should be approved subject to compliance by the applicant with the following Preconditions and Conditions:

PRECONDITIONS

The following precondition(s) must be fulfilled prior to the rezone and approval of the official site-plan:

- A. A record of developer's Title 30.66B SCC mitigation obligations shall have been recorded with the county auditor against the real property on which the development is proposed.

- B. Additional right-of-way, parallel and adjacent to the west boundary shall be deeded to the County along the development's frontage on 87th Ave SE such that 45 feet of right-of-way exists adjacent to the west boundary of the development.
- C. Additional right-of-way, parallel and adjacent to the existing right-of-way of Broadway Ave shall have been deeded to the County along the development's entire frontage such that all frontage improvements will be contained within the new right-of-way. Should the applicant be unable to deed the right-of-way, and after documented proof that the right-of-way can not be deeded has been submitted, an easement to the county encompassing the frontage improvements and the right of the public for roadway and pedestrian use shall be recorded after the easement has been approved by the Department of Public Works. In the event the applicant is unable to either obtain the right-of-way or easement, frontage improvements conforming to county standards or as modified shall have been installed along 87th Ave SE.

CONDITIONS

- A. The Official Site Plan received by PDS on 1/24/07 (Exhibits 18A, B & C) shall be the Official Site Plan and approved development 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. The sum of \$228,241.70 (\$1.36416 per sq. ft.) shall have been paid to Snohomish County as mitigation for project impacts on road system capacity within Transportation Service Area "E".
 - iii. The sum of \$10,791.75 (\$0.06450 per sq. ft.) shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area "E".
 - iv. The sum of \$42,586.20 (\$0.25453 per sq. ft.) shall have been paid to Snohomish County for the Washington State Department of Transportation as mitigation for project impacts on state highways.
 - v. The foregoing fees may be pro-rated and paid in accordance with the area of each building as it is proposed for construction.
- C. Prior to the issuance of a Certificate of Occupancy:
 - i. Frontage improvements conforming to county standards, or as modified per an approved deviation to the design standards, shall have been installed along the Broadway Ave. or 87th Ave. SE, which everyone pertains, based on pre-condition C. above.
- D. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit 6) shall be implemented. 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.

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 approval of an Official Site Development Plan is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the PRECONDITIONS and CONDITIONS set forth in Conclusion 4, above.

Decision issued this 4th day of June, 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 **June 14, 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 **June 18, 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:

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.

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 June 4, 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)
