

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: January 9, 2007

PLAT/PROJECT NAME: *SUNSET POINTE*

APPLICANT/
LANDOWNER: Jerald J. Lyons, Jr.

FILE NO.: 05 126770

TYPE OF REQUEST: **REZONE** for a 1.96 acre tract on the west side of Sunset Road at Strumme Road, from Residential-9600 (R-9600) to Residential-7200 (R-7200) and **SUBDIVISION** of 14 residential lots, using the Planned Residential Development (PRD) provisions of the Snohomish County Code.

DECISION (SUMMARY): APPROVED

BASIC INFORMATION

GENERAL LOCATION: The property is located on the west side of Sunset road, just south of its intersection with Strumme Road, about one-half mile east of Mill Creek, WA

ACREAGE: 1.96 acres

NUMBER OF LOTS: 14

AVERAGE LOT SIZE: 3,413 square feet

MINIMUM LOT SIZE: 3,000 square feet

DENSITY: 7.14 du/ac (gross)
11.04 du/ac (net)

OPEN SPACE: 17,141 square feet

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Mill Creek UGA
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 (PDS): Approve subject to conditions
Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on January 12, 2006 (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on December 12, 2006.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 23, 24 and 25)

A SEPA determination was made on October 12, 2006. (Exhibit 22) No appeal was filed.

The Examiner held an open record hearing on December 13, 2006, the 103rd 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 13, 2006 at 3:04 p.m. and ended at 3:08 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.

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. The plat will be accessed from Sunset Road by a public road which will turn south in the site and end in a cul-de-sac. No lots will have direct access to Sunset Road. There are no sensitive areas on the site. The development is comparable to other new residential subdivisions in the vicinity to the south and east. Lots to the north and east are generally one to five acres in area.
4. There were no communications from the public concerning the proposal.
5. The applicant will be required to construct urban standard frontage improvements on Sunset Road, and will dedicate an additional five feet to widen Sunset Road to 35 feet from the centerline. Improvements will include vertical curb, planter strips and five foot sidewalks.
6. The project will generate 124 average daily vehicle trips, with 9.75 in the a.m. peak hour and 13.13 in the p.m. peak hour. The project was found to be concurrent on September 27, 2006.
7. The applicant will pay impact fees as follows:

County Roads	\$2008.33 per dwelling unit
Transportation Demand Management	\$70.24 per dwelling unit
Mill Creek Streets	\$523.10 per dwelling unit
Parks & Recreation	\$1244.49 per dwelling unit
School	Fee in effect at time of building permit application
8. School children will be provided bus service to school. The bus stop will be on Sunset Road at the entrance to the plat. Children will have safe walking conditions on sidewalks.
9. Storm water will be routed to a detention vault and released in a controlled manner. Design of the storm water management system will occur during drainage plan review following approval of the preliminary plat.
10. The plat will be developed pursuant to Chapter 30.42B SCC relating to PRDs. The purposes of Chapter 30.42B are, among other things, to provide an alternative form of development within Urban Growth Areas which allow flexibility and creativity in site layout and design and which protects critical areas through the use of open space. Developers must employ a combination of architectural styles and building forms and relationships and integrate the development into the existing community. All while implementing the policies of the comprehensive plan.
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. There are no changes to the recommendations of the staff report.
2. The site is designated for Urban Low Density Residential (4-6 du/ac) in the GPP Future Use Land Use Map, as well as in the Mill Creek East UGA Plan. The R-7200 zone is one of the implementing zones for this designation.
3. A request for a site-specific rezone is a Type 2 application which is decided by the Hearing Examiner. (Chapter 30.72 SCC) The Hearing Examiner conducts a public hearing after notice is published, posted and mailed in accordance with SCC 30.70.045. The Hearing Examiner's decision on an application for a site-specific rezone is final, subject to appeal to the County Council.
4. Chapter 30.42A covers rezone 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 of 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.
5. RCW 58.17.100-120 sets for the criteria for approval of a subdivision. Such criteria require that the plat conform with applicable zoning ordinances and comprehensive plans, and makes appropriate provisions for the 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.
 6. PDS staff concludes that the proposed plat conforms to these criteria, and the Examiner concurs. The plat should be approved. Other criteria for approval of a PRD are satisfied as well. The plat should be approved subject to the following:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on September 13, 2006 (Exhibit 18) 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 19 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 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 one existing parcel. Lot one 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:
 - \$2,008.33 per lot for mitigation of impacts on county roads paid to the county,
 - \$70.24 per lot for transportation demand management paid to the county for TSA D,
 - \$523.10 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. 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.
- 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 on Sunset Road, 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]
- ii. 5 feet of property shall be dedicated on the west side of the existing 30 feet of right-of-way, to total 35 feet of right-of-way west of the Sunset Road right-of-way centerline. [SCC 30.66B.510, 30.66B.520]
- iii. ~~The public plat road, including a temporary turnaround in a temporary easement, shall have been constructed per EDDS 3-050.~~
- iv. 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 19) 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.

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.

- 7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The request to REZONE the property from R-9600 to R-7200 and a PLANNED RESIDENTIAL DEVELOPMENT SUBDIVISION of 14 lots is hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 9th day of January, 2007.

¹ Condition DELETED – due to a staff report scrivener’s error, the plat does not show any turnaround. 7/25/07
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EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **January 19, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **January 23, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Bob Pemberton

<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>
