

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
L84-1 MCPHERRON, LLC) **FILE NO. 05 126978 SD**
)
65 lot subdivision planned residential)
development of approximately 13.33 acres)

DATE OF DECISION: March 7, 2007

PLAT/PROJECT NAME: *L84-1 McPherron, LLC*

DECISION (SUMMARY): The 65-lot planned residential development subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located 7715 40th Street NE, Everett, Washington.

ACREAGE: 13.33 acres

NUMBER OF LOTS: 65

AVERAGE LOT SIZE: 4,181 square feet

MINIMUM LOT SIZE: 3,331 square feet

DENSITY: 4.87 du/ac (gross)
6.26 du/ac (net)

ZONING: R-7,200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (5-6-du/ac) – Marysville UGA

UTILITIES:

Water: Snohomish County PUD No. 1
Sewer: City of Marysville

SCHOOL DISTRICT: Lake Stevens

FIRE DISTRICT: No. 8

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 April 18, 2006. (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 28, 29 and 30)

A SEPA determination was made on January 16, 2007. (Exhibit 27) No appeal was filed.

The Examiner held an open record hearing on February 20, 2007, the 132nd 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 February 20, 2007 at 11:23 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, L84-1 McPherron, LLC was represented by Ron Thomas of Barclays North and Lafe Hermansen of Core Design. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services.
3. Abutting owner and resident Sandi Fifield’s letter of May 12, 2006 is detailed and articulate in expressing concerns about drainage and road impacts on her property. However, the subject project was redesigned after her letter had been written. Ms. Fifield did not attend the hearing.
4. Vicinity property owner Day Sandvig appeared and testified to concerns about the cutting of mature trees (70-80 years old), about the amount of cut and fill and related noise, about whether or not he can hook up to the plat’s sewer, about whether or not a vegetative buffer is required and whether 79th Avenue NE will be upgraded to accommodate the additional traffic. His concerns were responded to by the applicant’s representatives present.

The hearing concluded at 12:06 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

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 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 Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.
3. The subject site was recently annexed into Marysville although by interlocal agreement this application is subject to Snohomish County requirements. Future traffic improvements in the vicinity will be under Marysville jurisdiction. The proposed plat will generate (after TDM credits) 564 average daily trips, of which 44 will be a.m. peak-hour trips and 59 will be p.m. peak-hour trips.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,361.22 for each new single-family home.
5. 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 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.
6. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions consistent with comments received from Lake Stevens School district No. 4. All students will be bussed to school from the plat entrance, where a safe bus waiting area will be constructed by this applicant.
7. Seven Category 3 wetlands and one Type 4 stream are located on-site. PDS reviewed the Critical Areas Study (Exhibit 24) and Wetland Mitigation Plan (Exhibit 22) and found the project complies with the Critical Areas Regulation through mitigation under Innovative Development Design as allowed by SCC 30.62.370.
8. 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.

9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan, which became effective on February 1, 2006, and as revised through the completeness date of the application.
12. The subject property is designated as Marysville Urban Low Density Residential – Limited (5-6 du/ac) on the Future Land Use map and is located within an Urban Growth Area (UGA). According to the GPP, implementing zones include the R-7200, which is the case here.
13. The application meets all elements of SCC 30.42B for planned residential developments based on review by PDS in the staff report not repeated here.
14. The request is consistent with SCC 30.70.100 which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
15. 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 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 (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.

4. 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.
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 65-lot Planned Residential Development Subdivision on 13.33 acres **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The Preliminary Plat (Exhibit 19A & 19C) received by PDS on February 12, 2007, 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 February 12, 2007 (Exhibit 19A & 19D), 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 19 G-K and with all required landscape standards for perimeter, streetscape and open space treatment.
 - ii. The plat 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 final mitigation plan based on the Wetland Mitigation Map prepared by Wetland Resources, Inc. revised August 23, 2006 shall be submitted for review and approval during the construction review phase of this project.
- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. No direct access to the Road A and to 79th Ave. NE are allowed to any lots.

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

\$2,098.60 per lot for mitigation of impacts on County roads paid to the county,

\$2,447.00 per lot for mitigation of impacts on City streets for the City of Marysville paid to the City. Proof of payment shall be provided.

\$200.00 per lot for mitigation of impacts on City streets for the City of Arlington paid to the City. Proof of payment shall be provided.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

- iii. “The lots within this subdivision will be subject to school impact mitigation fees for the Lake Stevens 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 three existing parcels. Lots 1-3 shall receive credit.”
- iv. “The developer shall pay the County \$1,361.22 per single family unit as mitigation for impacts to the Centennial park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by April 18, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”
- v. “All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 05-126978 SD.”
- vi. “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.”
- vii. 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.
- viii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made);

"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 UDC 30.91N.010 are allowed when approved by the County."

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, unless a bond or other guarantee of performance is submitted to and accepted by PDS, pursuant to Condition D.iii., below.
- 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) and SCC 30.42B.210(3) (PRD development and landscaping).
- iv. 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 platlor 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.
- v. The Final Critical Areas Mitigation Plan shall have been satisfactorily implemented.
- vi. Urban frontage improvements shall be constructed along the parcel's frontage on 79th Ave. NE to the satisfaction of the DPW.
- vii. The additional area that is required at the southeast corner of the subject property making 30 feet of right-of-way shall have been dedicated to the County.
- viii. A pedestrian waiting area shall be constructed to the specifications of the DPW at the entrance to the proposed development on 79th Ave. NE. [RCW 58.17.110]

- 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.
 - ii. The features on the approved TDM plan shall have been constructed/installed (prior to any certificate of occupancy being issued and prior to recording for subdivisions).

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 7th day of March, 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 **MARCH 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 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 **MARCH 21, 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.