

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

DATE OF DECISION: January 9, 2007

PLAT/PROJECT NAME: *TANISON MEADOWS*

APPLICANT/
LANDOWNER: Tyler K. Olson

FILE NO.: 05 127314

TYPE OF REQUEST: **REZONE** of a 2.89 acre site from Residential-9600 (R-9600) to Residential-7200 (R-7200), and approval for a 14 lot **PRELIMINARY PLAT SUBDIVISION** utilizing the lot size averaging provisions of SCC 30.23.210

DECISION (SUMMARY): APPROVED subject to CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: The property is located at 11824 51st Avenue SE, Everett, WA

ACREAGE: 2.89 ac

NUMBER OF LOTS: 14

AVERAGE LOT SIZE: 4,526 square feet

MINIMUM LOT SIZE: 3,028 square feet

DENSITY: 4.8 du/ac (gross)
9.7 du/ac (net)

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: North Creek
Subarea Plan Designation: Suburban (1-4 du/ac) and Watershed Site Sensitive (1 du/2.2 ac)

UTILITIES:

Water: Silver Lake Water District
Sewage: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 1

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 9, 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 17, 18 and 19)

A SEPA determination was made on October 10, 2006. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on December 13, 2006, the 99th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The public hearing commenced on December 13, 2006 11:02 a.m. and concluded at 11:07 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. Tyler K. Olson (Applicant) seeks to rezone a 2.89 acre site at the southwest corner of 117th Street SE and 51st Avenue SE from R-9600 to R-7200, and to subdivide the site into 13 single-family lots, and one duplex lot. The site slopes down to the west to a wooded ravine, wetland and stream. These will be placed in a Native Growth Protection Area (NGPA). Applicant will utilize the lot size averaging provisions of the Snohomish County Code.
2. Access to the site will be from the adjacent streets. Full frontage improvements will be required. A concurrency determination was made on February 15, 2006.

3. Impact fees for parks, roads, state highways, transportation demand management and schools will be required.
4. School children will be picked up at the subdivision's frontage, and will have safe walking facilities to the bus stop.
5. One neighbor commented on the proposal concerning traffic and loss of natural habitat.
6. Storm water will be collected and routed to a detention pond and then released to the existing storm drain in 117th Street SE.
7. Water and sewer services will be supplied by the Silver Lake Utility. Electricity will be supplied by Snohomish County PUD.
8. A Determination of Nonsignificance (DNS) was issued for the proposal on October 10, 2006. There was no appeal.
9. 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 (ULDR: 4-6 du/ac) in the Future Land Use Map and is located in an Urban Growth Area (UGA). The R-7200 zone is one of the implementing zones for ULDR. The rezone from R-9600 to R-7200 should be approved.
3. The decision criteria for approval of the preliminary plat are set forth in RCW 58.17.100-120, and require that the proposed plat conform to applicable zoning ordinances and comprehensive plans, and make 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.
4. PDS staff concludes that the proposed plat satisfies these criteria and the Examiner concurs. The plat should be approved, subject to the following conditions to insure compliance with the statutory criteria:

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on August 22, 2006 (Exhibit 11) shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.

- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. 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.
 - ii. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 10.

- 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 Snohomish 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 one existing parcel. Lot 1 shall receive credit."
 - ii. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit, as mitigation for impacts to the Nakeeta Beach 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 January 9, 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.
 - 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 30.91N.010 are allowed when approved by the County."
 - iv. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit or double the amount for a duplex:

\$1,917.70 per lot (double the amount for the duplex lot) for mitigation of impacts on county roads paid to the county,

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.

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on 51st Ave SE to the satisfaction of the DPW.
- ii. 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 plat 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.

- iii. The detention pond landscaping shall be installed, inspected and approved.

E. Prior to occupancy of any unit in the development:

- 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 be constructed/installed.

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.

5. 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 2.89 acre site at the southwest corner of southeast 117th Street and 51st Avenue SE from Residential-9600 to Residential-7200 is hereby **APPROVED**, as is the **PRELIMINARY PLAT** of the site into 13 single-family lots and one duplex lot, **SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 9th day of January, 2007.

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: Monica McLaughlin/Mark Brown

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.
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