

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

In the Matter of the Application of )  
 ) **FILE NO. 05 127846 SD**  
**SPADAFORA CONSTRUCTION AND** )  
**DEVELOPMENT, LLC** )  
 )  
for a 76-lot preliminary plat planned residential )  
development (PRD) of 13.65 acres and landscape )  
modification )

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DATE OF DECISION: February 8, 2007

PLAT/PROJECT NAME: *Stonewater Creek*

DECISION (SUMMARY): The proposed 76-lot planed residential development subdivision is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: This project is located at 2811 124<sup>th</sup> Street SE, Everett, Washington.

ACREAGE: 13.65 acres

NUMBER OF LOTS: 76

AVERAGE LOT SIZE: 4,136

MINIMUM LOT SIZE: 3,386

DENSITY: 5.57 du/ac (gross)  
6.66 du/ac (net)

ZONING: R-8,400

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Everett

FIRE DISTRICT: No. 7

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 10, 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 24, 25 and 26)

A SEPA determination was made on September 7, 2006. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on January 30, 2007, 2006, the 84<sup>th</sup> 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 30, 2007 at 9:02 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Spadafora Construction & Development, LLC, was represented by Don Miller of GWC Land Development Consulting, LLC. Snohomish County was represented by Paul MacCready of the Department of Planning and Development Services.
3. Residents of nine vicinity households submitted pre-hearing written comments into the record (Exhibits 28 – 36), each expressing concern or opposition to the proposed PRD subdivision: David Brewer, Alan G. Buchanan, Mary Dulin, Dale and Marilyn Husted, Dan N. Malson, Martin and Marsha McGowan, Paul Miller, Zac Milne, and Gary W. Watts. One of those, Martin McGowan, testified at the hearing. Their foremost concern is traffic impacts at the intersection of 29<sup>th</sup> Avenue SE and 124<sup>th</sup> Street SE. Other concerns include storm drainage impacts to Ruggs Lake, Penny Creek and vicinity properties, loss of trees, and sewer/septic issues. The applicant’s representative, Don Miller, responded by letter dated July 31, 2006 (Exhibit 14).

The hearing concluded at 10:02 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 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.
3. The applicant, Spadafora Construction & Development, LLC, filed an application for a preliminary plat to be processed as a planned residential development (PRD) on formerly nine parcels consolidated as approximately 14 acres 500 feet north of Ruggs Lake. The site is west of 29<sup>th</sup> Avenue SE.
4. The proposed 76 lots will generate 609 new average daily vehicular trips, of which 48 will be morning peak-hour trips and 64 p.m. peak-hour trips. The first submittal of the application proposed that all of those trips would enter and leave the proposed plat at an access in the intersection of 29<sup>th</sup> Avenue SE and 124<sup>th</sup> Street SE. Vicinity residents protested effectively (see Public Hearing above), triggering further review by the Department of Public Works. As a result, the plat was revised to place vehicular access at 25<sup>th</sup> Avenue SE where stopping sight distance and centerline radii are sufficient. That revision addresses the primary public concern about the proposed development.
5. In order to provide vehicular access to the nine easternmost lots (Lots 37 – 45), the internal plat road crosses Penny Creek, an urban Type 3 stream with non-Endangered Species Act resident game fish and also crosses that Creek's associated urban Category 3 wetland (Wetland A). The result is permanent impact to Wetland A totaling 3,686 square feet and impact to its buffer totaling 5,806 square feet. Such impacts by a private or public road are allowed pursuant to SCC 30.62.350(1)(b)(ii) which requires a critical area study (SCC 30.62.340), a mitigation plan (SCC 30.62.345) and compliance with the review criteria of SCC 30.62.365 or innovative design approval pursuant to SCC 30.62.370. Those requirements are met by the applicant's Critical Area Study and Innovative Development Design Plan (Exhibit 15 and map, Exhibit 21-A). PDS biologist Patrick McGraner's testimony assured the Examiner: "It meets code".
6. 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.

7. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. The Everett School District reports that all students will be picked up by bus at the entrance to the development. Thus, no off-site pedestrian facilities are required.
8. 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.
9. 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. Vicinity resident Martin McGowan testified that Ruggs Lake is deteriorating daily and, as a private lake, little governmental support is provided to help maintain the lake. The Examiner notes that this development will bring public sewers to the community, which may help reduce water quality degradation. Photographs and text submitted by David Brewer (Exhibit 28) and text by others demonstrates the public concern that stormwater drainage be thoughtfully designed here. Silver Lake drains into Ruggs Lake, as do vicinity neighborhoods via primary water flow paths and the water collects in the field southeast of Ruggs Lake.
10. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service as well as electrical power will be available for this development through the Silver Lake Water District and the Snohomish County Public Utility District No. 1.
11. The subject property is designated Urban Low Density Residential (ULDR) 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.
12. 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.
13. 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 76-lot preliminary plat Planned Residential Development on 13.65 acres is **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

### **CONDITIONS**

- A. The preliminary plat/PRD official site plan received by PDS on October 26, 2006 (Exhibit 18) shall be the approved plat configuration and PRD official site plan. 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 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 plattor 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 conceptual Critical Area Study and Innovative Development Design Plan for Stonewater Creek dated August 2, 2006 (Exhibit 15) shall be submitted for review and approval during the construction review phase of this project.
  - iv. 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 20 and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.

- v. 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 dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."
- ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Everett 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 nine existing parcels. Lots 1 through 9 shall receive credit."
- iii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:  
\$2,139.97 per lot for mitigation of impacts on county roads paid to the County,  
\$288.54 per lot for mitigation of impacts on state highways paid to the County,  
\$52.42 per lot for mitigation of impacts on City of Mill Creek streets paid to the City. Proof of payment shall be provided.  
These payments are due at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid."
- iv. "A 30-foot radius bulb at the end of the stub road between Lots 3 and 62 shall be provided or access to either Lot 3 or Lot 62 shall be restricted to no closer than 50 feet from the end of the stub road."
- v. 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."

- 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 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.”

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel’s frontage on 25th Ave SE to the satisfaction of the County.
- 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 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.

- iii. The final mitigation plan shall be completely implemented.
- 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. Prior to any certificate of occupancy being issued or final inspection:

- i. The features on the approved Transportation Demand Management (TDM) Plan (Exhibit 7) shall be constructed/installed.
- ii. Fir trees on the west side of 25th Ave SE to the south of the proposed access location shall be removed to provide intersection sight distance to the satisfaction of the County.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this recommended 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 8<sup>th</sup> day of February, 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, 2<sup>nd</sup> 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 20, 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, 2<sup>nd</sup> 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 22, 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.

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### Staff Distribution:

Department of Planning and Development Services: Paul MacCready

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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