

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: March 16, 2007

PLAT/PROJECT NAME: **BELLA TERRA**

APPLICANT/
LANDOWNER: Phoenix Development, Inc.

FILE NO.: 05 128322 SD

TYPE OF REQUEST: **REZONE** from Residential-9600 (R-9600) to Residential-7200 (R-7200) and a 150 lot **SUBDIVISION** of approximately 35.15 acres utilizing the lot size averaging provisions of the Snohomish County Code

DECISION (SUMMARY): **APPROVED** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 413 143rd Street SW et al., Everett, WA
Portions of the plat front 143rd Street SW, 140th Street SW and 137th Street SW

ACREAGE: 35.15 acres

DENSITY: 4.2 du/ac (gross)
6.6 du/ac (net)

NUMBER OF LOTS: 150

AVERAGE LOT SIZE: 5,770 square feet

MINIMUM LOT SIZE: 3,774 square feet

OPEN SPACE: 401,924 square feet

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

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential

UTILITIES:

Water/Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approve subject to conditions

Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed a Master Application on June 7, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit March 1, 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 24, 25 and 26)

A SEPA determination of non-significance was made on January 29, 2007. (Exhibit 23) No appeal was filed.

The Examiner held an open record hearing on March 1, 2007, the 95th 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 March 1, 2007 at 2:00 p.m.

1. The Examiner indicated that he had read the PDS staff report and, reviewed the file and therefore had a general idea of the particular request involved.

The hearing concluded at 3:46 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. Based on all of the evidence of record, the following Findings of Fact are entered:
2. 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.
3. Concerns were expressed regarding drainage, transportation and pedestrian safety, schools, parks, the natural environment and the need to rezone the property.

4. The revised 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 unless otherwise stated below.
5. The project will be developed in four phases, and a phasing plan will be submitted for approval which will identify the on-site and off-site improvements to be installed with each phase.
6. No parks or public open spaces are proposed on the site. Applicant will be required to pay park impact fees of \$1,244.49 for each dwelling unit.
7. Impact fees for county roads, schools and state highways are also required.
8. Prior to site development, a full drainage plan must be approved which conforms to the county's requirements under SCC 30.63A.
9. The intersection of Meridian Avenue S and 3rd Avenue S at 128th Street SW operates at a marginal LOS E. Future improvements to be installed by a private developer north of 128th Street SW and the WSDOT improvements to the ramps to Interstate 5 at 128th Street SW will ease the congestion at this intersection.
10. The comprehensive plan designates the site for Urban Low Density Residential uses. The R-7200 zone is one of the implementing zones for this designation.
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.
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 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 hearing examiner may approve a rezone only when all 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. 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 Pro Tem on the application is as follows:

The requests for a **REZONE** and a 150 lot **SUBDIVISION** are hereby **APPROVED**, subject to compliance by the applicant with the following Conditions:

- A. The preliminary plat, received by Planning and Development Services (PDS) on February 13, 2007 (Exhibit 16) 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 mitigation plan based on the Bella Terra Conceptual Mitigation Plan Wetland Map – South, prepared by Sewall Wetland Consulting, Inc., submitted to PDS on November 9, 2006 shall be submitted for review and approval during the construction review phase of this project.
 - iii. A final detention pond landscape plan shall have been submitted to and approved by PDS. The plan shall be in conformance with Exhibit 8.
 - iv. The temporary drainfield easements associated with the Boundary Line Adjustment applications related to this project (file numbers 05-128322-002 BA and 06-127978 BA) shall be shown on the construction plans on proposed lots 43-45 and 49.
 - v. The applicant shall provide evidence that Boundary Line Adjustment applications 05-128322-001 and 05-128322-002 BA have been approved by PDS and recorded with the county Auditor.
 - vi. The applicant shall provide evidence that the temporary drainfield easement on proposed Lot 49 (associated with file number 05-128322-002 BA) has been recorded with the county auditor.
 - vii. A phasing plan shall be submitted to and approved by PDS which enumerates the on-site and off-site improvements to be installed with each phase.
- 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 Mukilteo 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 22 existing parcels. Lots 1-22 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 June 7, 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:

\$2,233.23 per lot for mitigation of impacts on county roads paid to the county,

\$301.11 per lot for impacts to WSDOT roads paid to the county,

\$239.04 per lot for mitigation of impacts on City streets for the city of Mill Creek 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.”

- v. Five feet of right-of-way shall be dedicated to Snohomish County on the final recorded plat, parallel and adjoining the existing right-of-way along the parcel’s frontage on east side of Meadow Road along with a 25 foot radius right-of-way at the intersections of the internal public roads and Meadow Road, 140th Street SW and 143rd Street SW [SCC 30.66B.510 and 30.66B.520].

- D. Prior to final plat recording of any phase and in accordance with the phasing plan approved per condition B vii., above:

- i. Urban frontage improvements shall be constructed along the parcel’s frontage on Meadow Road, 137th Street SW, 140th Street SW and 143rd Street SW to the specifications of the DPW [SCC 30.66B.410].
- ii. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development [EDDS].
- iii. School pedestrian facilities shall be provided to 311-137th Street SW, ~~at~~ the intersection of Meadow Road and 140th Street SW, the intersection of 137th Street SW and 1st Place W, ~~at~~ 324-140th Street SW and 407-143rd Street SW to the specifications of DPW.
- iv. The TDM plan shall have been implemented and constructed.

- v. 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.

GPA 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.

- vi. The detention pond landscaping shall be installed, inspected and approved.
- vii. The final critical areas mitigation plan shall be completely implemented.
- viii. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.
- ix. Bonding improvements in an acceptable alternative to construction prior to recording where allowed by PDS. Where bonding is allowed, such construction must be completed, inspected and approved by PDS prior to occupancy.

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 16th day of March, 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 **March 26, 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 30, 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.
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