

FOR OFFICE USE ONLY:
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REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER PRO TEM

DATE OF DECISION: March 15, 2007

PLAT/PROJECT NAME: *LILY TREE LANE*

APPLICANT/
LANDOWNER: John Lakhani

FILE NO.: 05 128332 SD

TYPE OF REQUEST: Preliminary plat approval for 31 lots on a 6.33 acre site
utilizing lot size averaging

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

BASIC INFORMATION

GENERAL LOCATION: The property is located on the north side of 100th Street NE at 62nd Drive NE, about
one mile northeast of the city limits of Marysville, WA

ACREAGE: 6.33 acres

DENSITY: 4.9 du/ac (gross)
6.0 du/ac (net)

NUMBER OF LOTS: 31

AVERAGE LOT SIZE: 6,381 square feet

MINIMUM LOT SIZE: 5,000 square feet

OPEN SPACE: 17,074 square feet

ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential
Subarea Plan: Marysville
Subarea Plan Designation: Urban low Density Residential (6 du/ac)

UTILITIES:

Water: City of Marysville
Sewage: City of Marysville

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to preconditions conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed a Master Application on January 9, 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 14, 15 and 16)

A SEPA determination of non-significance was made on December 27, 2006. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on February 28, 2007, the 118th 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 28, 2007 at 9:00a .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 Examiner viewed the area the next day.

The hearing concluded at 9:15 a.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. 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 unless otherwise stated below.
4. Water and sewer services are available at the site.
5. The comprehensive plan designates the site for Urban Low Density Residential – Limited (ULDR-6 du/ac). The site is zoned R-7200.
6. Applicant has interpreted the lot size averaging provisions to include the area dedicated for road. Such inclusion is permitted to short plats, but not for a full subdivision. Applicant must revise the proposal to satisfy the lot size averaging provisions. This may result in fewer lots in the plat.
7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, 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. 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 request for approval of the preliminary plat for a 31-lot **SUBDIVISION** on 6.33 acres utilizing the lot size averaging provisions of the Snohomish County Code is hereby **GRANTED**, subject to compliance by the applicant with the following Preconditions and Conditions:

PRECONDITIONS

- A. The proposal shall be revised to comply with the lot size averaging provisions of code.
- B. Obtain Snohomish Health District approval.

CONDITIONS

- A. The preliminary plat received by PDS on December 4, 2006 (Exhibit 12) shall be the approved plat configuration. 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. 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 *Critical Areas Study* prepared by Wetland Resources, Inc. dated April 5, 2006 (Exhibit 17) 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. “The lots within this subdivision will be subject to school impact mitigation fees for the Marysville School District No. 25 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 6, 21 and 29 shall receive credit.”
 - ii. Fifteen feet of additional right-of-way along this property’s frontage shall be dedicated to Snohomish County.
 - iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$1,863.74 per lot for mitigation of impacts on county roads paid to the county,
 - \$207.60 per lot for mitigation of impacts on the City of Arlington streets paid to the city.
 - \$2,540 per lot for mitigation of impacts on the City of Marysville streets paid to the city.
 - \$33.00 per paid to WSDOT for Project 34 (SR-9 at 108th Street NE)

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.

- iv. The developer shall pay the County \$48.82 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 consisting of 18 feet of pavement, curb, gutter, planter and a 5-foot sidewalk shall have constructed. Construction of improvements is required unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.
- ii. The final wetland mitigation plan shall be completely implemented.

E. 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.

Decision issued this 15th 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 29, 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: Bob Pemberton

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than March 15, 2008.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)