

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

DATE OF DECISION: May 23, 2007

PLAT/PROJECT NAME: *HOUVENER SHORT PLAT*

APPLICANT/
LANDOWNER: Paul Houvener

FILE NO.: 06-101723 SP

TYPE OF REQUEST: 9-lot short subdivision

DECISION (SUMMARY): Granted - subject to conditions

BASIC INFORMATION

LOCATION: The subject property is located at The subject site is located on the east side of 51st Avenue NE, between the northern and southern terminus of 52nd Drive NE between 119th Place NE and 117th Place NE in the vicinity of Marysville. Tax parcel number is 300510-002-011-00.

ACREAGE: 2.25

AVERAGE LOT AREA: 10,085 square feet

GROSS DENSITY: 3.7 du/ac

NET DENSITY: 4.7 du/ac

NUMBER OF LOTS: 9

SMALLEST LOT AREA: 7,094 square feet

AVERAGE LOT SIZE: 10,086 square feet

ZONING: R-7200

COMPREHENSIVE PLAN:

General Policy Plan: Urban Low Density Residential

SCHOOL DISTRICT: Marysville

FIRE DISTRICT: No. 12

UTILITIES:

WATER/SEWER: City of Marysville

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approval subject to conditions

INTRODUCTION

The applicant is requesting approval of a short subdivision of 2.43 acres into 9-single family lots utilizing the lot size averaging provisions of county code. All lots will be served by driveways off the new public road connection of 52nd Drive NE which currently terminates at the northern and southern boundaries of the parcel.

Section 30.41B.030(1) of the Snohomish County Code requires short subdivision applications proposing dedication of new public road to be heard and decided upon by the hearing examiner as a Type 2 permit process.

The short plat application was originally submitted to Planning and Development Services (PDS) on June 19, 2006, and was determined to be complete as of the date of submittal for regulatory purposes, but insufficient for further review. (Exhibit 1) Subsequent resubmittals were determined sufficient for further review.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 11 -13)

The short subdivision application is exempt from SEPA

The Examiner held an open record hearing on May 8, 2007, the 160th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The Examiner conducted a site visit on May 8, 2007.

PUBLIC HEARING

The public hearing commenced on May 8, 2007 at 3:01 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and would view the area after the hearing and therefore has a general idea of the particular request involved.
2. The Examiner admitted into the record the staff report and exhibits 1-23.
3. Those in attendance at the hearing expressing an interest in testifying were administered the oath/affirmation.
4. Susan Dretke, Supervisor from Planning and Development Services, appeared and testified. She presented the county staff report. She explained that water and sewer will be provided by the city of Marysville. She explained that this short plat required a public hearing was that the proposal included a public road dedication. The road would consist of a connection of the stub ends of 52nd Drive NE located between 117th and 119th Place NE. She said that all the residences would access from this road. There would also be two shared driveways from this road to serve the western lots. PDS does not have the authority under the subdivision code to require sprinklers. She made a correction to the staff report regarding sidewalks. The condition about sidewalks leading to the school bus stop described on page 5, section 10, should also be contained in the conditions portions of the report at (D) (iii).
5. Andy McAndrews, a planner working for applicant , appeared and testified on behalf of the applicant. He reviewed the specifics of the proposed 9 lot short plat. He pointed out the two shared driveways. He said he had no objections to anything in the staff report.
6. Terry Nystrom, 11609 52nd Drive NE Marysville, appeared and testified. She is a neighbor to the proposed project. She has concerns about traffic impacts from the subdivision. She is not concerned about the development. She would like the only access from the 119th side. She asked Mr. McAndrews about the location of the school bus stop. It is at 117th.
7. Andy Mc Andrews reappeared and testified. He said there are no plans for off-site construction of sidewalks. The connection of the stub ends of 52nd Drive NE are the safest for the Fire Department access for both neighborhoods to the north and south. He is proposing to install sprinklers for the residences to be constructed on lots 6 -9. There is another proposed development to the north which may require sidewalks.
8. Susan Dretke, reappeared and testified. She said that PDS would consult with the Marysville School District during construction plan review to determine whether further sidewalks were needed.
9. The applicant consented to a short delay in the rendering of this decision.

The hearing concluded at 3:17 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.
3. The concerns expressed about traffic impacts have been addressed by the county's review process. The connection of the north and south termini of 52nd Drive NE will have the beneficial aspect of increasing fire and emergency access to the various neighborhoods from alternate directions and removing the need for the large fire trucks to make tight turns or backup. Based upon the testimony of PDS that additional review of the construction plans a further determination of the need for sidewalks to the school bus stops will be made.
4. The request is for approval of a short subdivision of 2.43 acres into 9-single family lots utilizing the lot size averaging provisions of county code. All lots will be served by driveways off the new public road connection of 52nd Drive NE which currently terminates at the northern and southern boundaries of the parcel.
5. The site is a vacant, relatively flat site primarily vegetated with shrubs and grasses with a few large trees.
6. The area surrounding the site is zoned for single family residential development (R-9600, R-8400 and R-7200) and is developed with a mix of suburban density single family development and single family homes on larger lots. There are also scattered vacant parcels in the area.
7. The proposal is within Park District No. 302 and is subject to Chapter 30.66A SCC, which requires payment of \$48.82 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.
8. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Marysville School District No. 25, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 1 existing lot.
9. The PDS Traffic 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.

a. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 9 new SFRs, which is 9.57 ADT/SFR. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 86.13 new ADT and has a road system capacity impact fee of \$20,843.46, based on \$242.00/ADT. The impact fee for each SFR is \$2,315.94. This impact fee must be paid prior to issuance of the building permit.

b. Concurrency

Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall in arrears, and does not impact any designated ultimate capacity arterial units, it is deemed concurrent. A concurrency certificate has been included with Public Works' final recommendation, which will expire six calendar years from the date the concurrency determination was made. Prior to the expiration date of the development's concurrency certificate, plat construction shall have been obtained, or a new concurrency determination will be required.

c. Inadequate Road Condition (IRC) [SCC 30.66B.210]

The subject proposal will not impact any IRC locations identified at this time within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

d. Access and Circulation [SCC 30.66B.420]

Access is proposed from the north and south stubs of 52nd Drive NE. This segment will be the connection between 119th Place NE and 117th Place NE. The internal road is proposed to be constructed as a 28 foot paved section with curb, gutter, planter strip and a 5-foot sidewalk on both sides of the right-of-way centerline. The lots are accessed via 5 individual driveways, and two shared driveways. No access is proposed onto 51st Avenue NE.

e. Dedication of Public Right-of-Way

51st Avenue NE is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. The Snohomish County Design Group has requested that this project dedicate

40 feet of right-of-way. 15 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 25 feet of additional right-of-way is required. The right-of-way along 51st Avenue NE is adequately shown.

The right-of-way for the connection of 52nd Drive NE is proposed to be 51 feet. However, the right-of-way to the north of the development is 60 feet wide and to the south of the development is 80 feet. To be consistent, the right-of-way for this development shall be 60-feet wide. The applicant must revise the short plat map to show dedication of 60 feet of right-of-way along 52nd Drive NE.

f. State Highway Impacts [SCC 30.66B.710]

This development is not subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement, therefore no mitigation will be required to be paid for impacts to the state highway.

g. Other Streets and Roads [SCC 30.66B.720]

Public Works will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the interlocal agreement referred to in SCC 30.61.230 between the county and the other agency. Because this proposal is exempt from the requirements of SEPA, mitigation to the cities of Arlington and Marysville cannot be required under the county and cities adopted interlocal agreements, however, the applicant has offered to pay mitigation fees to the city of Marysville in the amount of \$3,504.20 and to the city of Arlington the amount of \$471.77. These amounts will be imposed as conditions of approval.

h. Transportation Demand Management (TDM) [SCC 30.66B.630]

All new developments in the urban area shall provide TDM. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. [SCC 30.66B.650].

It has been determined that the cost of removing one peak hour trip from the road system is approximately \$1,500.00. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal \$1,500.00 times the required trip reduction percentage times, the development's peak hour trip generation.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 9.09 new PM peak hour trips x \$1,500.00 which equals \$681.75. An acceptable offer for TDM was received by PDS on June 19, 2006.

i. Pedestrian Facilities [RCW 58.17.110]

The examiner is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments from the school district were received by PDS on July 10, 2006. The school district indicated that the school children will be picked up at the intersection of 117th Place NE and 51st Avenue NE. Adequate walkways from the proposed development to the nearest school bus stop will be a required condition for the approval of this project. Further review of extent of off-site sidewalks will be conducted by PDS during the construction plan review process.

10. Planning and Development Services (Engineering) has reviewed the concept offered and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.
11. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC.
12. 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 Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and 96-071 which amended the map and text of the Snohomish County GMA Comprehensive Plan, and adopted an area-wide rezone within the Urban Growth Areas of the county respectively. This application was complete on June 19, 2006 after the effective date of the updated General Policy Plan.

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) 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. Land in this category may be developed at a density of four to six dwelling units per acre. Implementing zones include the R-7200, PRD-7200, R-8400, PRD-8400, R-9600, PRD-9600 and WFB zones”.

The nine single family lots proposed are consistent with the density provisions of Snohomish County’s GMA-based zoning regulations under Subtitle 30.2.

13. This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

The proposal has been evaluated for compliance with the lot size averaging (LSA) provisions of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the

minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way (ROW) setbacks of 15 feet, except that garages must be setback 18 feet from the ROW (except alleys) and corner lots may reduce one ROW setback to no less than 10 feet. Lot coverage for this proposed subdivision is a maximum of 55%

The LSA calculation is as follows:

Area in Lots (90,773 square feet) + Critical Areas and Buffers (0 square feet) + Open Space (0 square feet) = 90,773 square feet ÷ 9(# of lots proposed) = 10,085 square feet

The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

14. The short subdivision application is exempt from SEPA.
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.
2. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
5. The Examiner has jurisdiction to conduct the hearing and render a decision upon the application.
6. 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 9 lot short subdivision is hereby **APPROVED**, subject to the following conditions:

- A. The preliminary short plat received by PDS on October 27, 2006 (Exhibit 3) shall be the approved short plat configuration with the revision required in D.i. below. SCC 30.41B governs changes to the approved short.
- 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.
- 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 1 existing parcel. Lot 1 shall receive credit.”
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$2,315.94 per lot for mitigation of impacts on county roads paid to the county,
\$75.75 per lot for transportation demand management paid to the county,
\$389.36 per lot for mitigation of impacts on the City of Marysville paid to the city.
\$52.42 per lot for mitigation of impacts on the City of Arlington paid to the city.

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.
 - iii. “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 short plat:

- i. Revise the short plat map to show dedication of 60 feet of right-of-way along 52nd Drive NE or obtain an approved deviation for lesser right-of-way.
- ii. The construction of 52nd Drive NE will shall comply with the city of Marysville design standards.
- iii. Adequate walkways from the proposed development to the nearest school bus stop are required. These include safe off-site walkways as deemed appropriate by PDS at the time of construction plan review.

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

Decision issued this 23rd day of May, 2007.

James Densley, 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 **JUNE 4, 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 **JUNE 6, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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.