

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
THE MCNAUGHTON GROUP) **FILE NO. 06 103214 LU**
)
Official site plan approval for the future construction of)
a 36 unit low density multiple residence on 4.35 acres)

DATE OF DECISION: October 11, 2007

PLAT/PROJECT NAME: *Autumn Grove LDMR*

DECISION (SUMMARY): The requests for a official site plan approval for the future construction of a 36-unit LDMR on 4.35 acres is hereby **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 3303 180th Street SE, Bothell, Washington.

ACREAGE: 4.35 acres

NUMBER OF UNITS: 36

DENSITY: 8.2 du/ac (gross)

ZONING: LDMR

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Everett No. 2

FIRE DISTRICT: No. 7

INTRODUCTION

The applicant filed the Master Application on March 8, 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 20, 21 and 22)

A SEPA determination was made on July 30, 2007. (Exhibit 19) No appeal was filed.

The Examiner held an open record hearing on September 12, 2007, the 105th 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 September 12, 2007 at 11:03 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, The McNaughton Group, was represented by Brian Holtzclaw. Snohomish County was represented by Scott Whitcutt of the Department of Planning and Development Services. No member of the general public attended the hearing. Chris Duros, who owns land to the east of the subject site, submitted a pre-hearing document (Exhibit 26) expressing concern about the proposed subdivision's provisions for storm drainage, sanitary sewer and sight-obscuring landscaping. The applicant's response (Exhibit 37) by Shawn Smith was submitted at hearing.

The hearing concluded at 12:00 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 unless otherwise stated below.
3. The applicant, The McNaughton Group, filed an application for approval of an official site plan and future grading and construction for 36 new single-family detached residences on 4.35 acres zoned LDMR approximately two years ago. Two existing single-family residences will be removed. The site is addressed 3303 180th Street SE.
4. LDMR zoning lies to the north and east and a mixture of R-7,200, R-8,400 and R-9,600 lies to the west and south: all predominantly in single-family use.
5. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home.
6. The DPW reviewed the request with regard to traffic mitigation and road design standards. That review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B 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 (Title 26C SCC) have been reviewed and set forth in the conditions.
8. The subject site has identified critical areas associated with future site development. The applicant has offered a mitigation plan addressing protection and minor impacts to critical areas under GMA adopted critical areas regulations. The applicant requests that a required public trail through the wetlands on-site to connect with this applicant's project known as Remington Heights be of a pervious material such as grasscrete, pervious concrete or gravel.
9. PDS has reviewed the Critical Areas Study and Conceptual Mitigation Plan for proposed development activity associated with protection and mitigation of minor impacts to critical areas. Such review and analysis has determined that the official site plan representations and mitigation proposal can comply with the critical areas regulations through construction permitting associated with final wetland mitigation plan approval and that such approvals will achieve compliance with GMA adopted regulations and bear a substantial relationship to the public health, safety and welfare.
10. 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 (Title 24 SCC).
11. The Snohomish County Health District has no objection to this proposal because public water and sewer service will be available for this development through the Alderwood Water and Wastewater District (Exhibit 32).

12. The property is designated Urban Medium Density Residential (6-12 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the LDMR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the LDMR zone.
13. The Urban Medium Density Residential designation covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the requested Low Density Multiple Residential zone. The proposed official site plan will be consistent with the General Policy Plan designation of the property.
14. 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.
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. 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 Snohomish County Council by its Motion 07-447 of August 8, 2007 ordered that there be consideration of whether a proposed rezone bears a substantial relationship to the public health, safety and welfare and that consideration go beyond consideration of only the Comprehensive Plan to include other issues relevant to that requisite substantial relationship. The Council required that if such factors other than the Comprehensive Plan are apparent from the record, those factors must be identified and discussed in staff report and in the Examiner's decision. No such factors are raised in this record.
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 requests for a official site plan approval for the future construction of a 36-unit LDMR on 4.35 acres is hereby **CONDITIONALLY APPROVED**, subject to the following preconditions and conditions:

PRECONDITIONS:

The following preconditions must be fulfilled prior to the approval of the official site-plan:

1. A Concomitant Agreement, as provided to the file, shall be recorded with the County Auditor binding future site development to Exhibit 17A.
2. A Record of Developer Obligations shall have been recorded with the County Auditor against the real property on which the development is proposed.

CONDITIONS:

Prior to the issuance of any grading permit:

1. A final wetland mitigation plan shall be approved consistent with preliminary wetland mitigation approval.
2. A CASP must be submitted, reviewed, approved and recorded with the County Auditor.

Prior to the issuance of any building permit:

3. \$2,413.24 per unit for mitigation of impacts on county roads paid to the county.
4. \$72.54 per unit for transportation demand management paid to the county for TSA D.
5. \$249.00 per unit for mitigation of impacts on Mill Creek streets paid to the City.
6. \$32.90 per unit for mitigation of impacts on State roads paid to the county for 65 ADT x \$18.22 per ADT impacting DOT 38 (SR 527 at 186th Place SE).
7. \$1,244.49 per unit for mitigation of impacts to parks and recreation.
8. Per unit school impact mitigation fees for the Everett School District No 2 based upon the certified amounts according to the Base Fee Schedule in effect for the Everett School District No. 2, at the time of future building permit submittal and collected at the time of building permit issuance for each proposed units.
9. These payments are due prior to or at the time of each building permit issuance. Once building permits have been issued all unit mitigation payments shall be deemed paid by PDS.
10. 8.5 feet of property shall have been deeded as right-of-way along the property frontage with 180th Street SE, to total 48.5 feet from the centerline of the right-of-way.
11. 27.5 feet of property shall have been deeded as right-of-way along the property frontage with 32nd Drive SE, to total 53 feet total for the entire width of the right-of-way.
12. The portion of 40-foot radius of the cul-de-sac that falls outside of the existing right-of-way for 32nd Drive SE shall have been deeded as right-of-way.

Prior to occupancy of any building:

13. Urban standard frontage improvements conforming to EDDS shall be constructed along the property frontage with 32nd Drive SE. (SCC 30.66B.410)
14. The cul-de-sac at the end of 32nd Place SE shall have been constructed.
15. Urban standard frontage improvements conforming to EDDS shall be constructed along the property frontage with 180th Street SE. (SCC 30.66B.410)
16. A pedestrian facility of a surface acceptable to DPW shall have been constructed to EDDS requirements through to the north to connect to a pedestrian facility in the Kensington Park development (PFN 06-103915). It must be inside a public or private pedestrian right-of-way easement.

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.

Decision issued this 11th day of October, 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, 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 **OCTOBER 22, 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 **OCTOBER 25, 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: Scott Whitcutt

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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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 OCTOBER 11, 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)
