

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

DATE OF DECISION:
ON RECONSIDERATION: August 15, 2007

PLAT/PROJECT NAME: **CARLSON LDMR**

APPLICANT/
LANDOWNER: The McNaughton Group LLC

FILE NO.: 06 126088 LU

TYPE OF REQUEST: **REZONE** from Residential-9600 (R-9600) to Low Density Multiple Residential (LDMR) and **OFFICIAL SITE PLAN APPROVAL** for the development of 42 single-family detached units on a 5.02 acre site

DECISION (SUMMARY): Approved subject to ~~Preconditions~~¹ and Conditions

BASIC INFORMATION

GENERAL LOCATION: The site address is 19218 39th Avenue SE, Bothell, WA

ACREAGE: 5.02

ZONING: CURRENT: R-9,600
PROPOSED: LDMR

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Medium Density Residential

UTILITIES:
Water: Alderwood Water & Wastewater District
Sewage: Alderwood Water & Wastewater District

SCHOOL DISTRICT: Northshore

¹ Removed on Reconsideration
06126088A.doc

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

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

INTRODUCTION

The applicant filed the Master Application on November 7, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on July 16, 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 15, 16 and 17)

A SEPA determination of nonsignificance was made on June 18, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on July 18, 2007, the 112th 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 July 18, 2007 at 2:03 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. No one appeared in opposition to the request.

The hearing concluded at 2:34 p.m.

NOTE: The above information reflects the information submitted to the Examiner summarizing the statements that were made at the hearing. However, for a full and complete record, verbatim audio tapes of these hearings are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for a rezone from R-9600 to LDMR, and for approval of an Official Site Plan for 42 single-family residences on a 5.02 acre site.
4. The site and immediately surrounding properties are zoned R-9600.
5. Chapter 30.42A covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

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.

It is the finding of the Examiner that the request meets these requirements.

6. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
7. Public water and sewer service will be available for this development as well as electrical power.
8. 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, except as follows:

The design of the future public road, 39th Avenue SE, does not meet EDDS 3-01 requirements for road circulation. For the development of in excess of 25 lots or 2150 average daily trips, the road must be connected in at least two locations with another road or roads that meet the applicable standards for this traffic volume. A deviation from this requirement was denied. Applicant may develop the site for 25 dwellings, but to establish more it must satisfy the requirement for a second public road connection. The road that will be constructed for Jewell Assembly will not satisfy EDDS 3-01.
9. Exhibit 10 is an aerial photograph which very clearly shows the property itself and the surrounding area and its compatibility in this area.
10. Any Conclusion of Law in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

CONCLUSIONS:

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 request is for a rezone and, therefore, must be consistent with the GMACP; GMA based county codes. In this regard, the request is consistent with those plans and codes. The type and character of land use permitted on the project site is consistent with the General Policy Plan (GPP) ULDR designation of the property and meets the required regulatory codes as to density, design and development standards.
3. The request is also for approval of an Official Site Plan. Approval of an Official Site Plan or Binding Site Plan is governed by SCC 30.41D, which provides an alternative method for the division of land. A Binding Site Plan ensures through covenants, conditions, restrictions, easements and other requirements binding on all lot owners that the collective lots continue to function as one site concerning but not limits to road improvements, open space, drainage and other elements specified in SCC 30.41D.

The decision criteria for approval of a binding site plan are set forth in SCC 30.41D.100 and require consistency with the County’s development regulations as stated in that section. Development of the site must be in conformity with the binding site plan.

4. The request should be approved as submitted.
5. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

DECISION:

The request for a **REZONE** from R-9600 to LDMR for this property is hereby APPROVED. The **OFFICIAL SITE PLAN** for the development of 42 single-family detached units on a 5.02 acre site is APPROVED subject to the following ~~preconditions and~~² conditions:

PRECONDITIONS

~~The applicant shall satisfy DPW requirements for an additional road connection for 39th Avenue SE.~~³

CONDITIONS

- A. The official site plan received by PDS on November 7, 2006 (Exhibit 6A-6C) shall be the official site plan.

² Removed on Reconsideration

³ Removed on Reconsideration

- 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 applicant shall provide PDS with a site plan and water plan for the location of the required fire hydrants.
- C. In conformity with applicable standards and timing requirements:
 - i. The preliminary landscape plan (Exhibit 5) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.
- D. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- E. Prior to occupancy of units 26 through 42, Applicant shall satisfy the Department of Public Works' requirements for an additional road connection for 39th Avenue SE.⁴

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 on Reconsideration issued this 15th day of August, 2007.

Gordon Crandall, Hearing Examiner Pro Tem

EXPLANATION OF APPEAL PROCEDURES

Reconsideration

Further reconsideration is not available from this reconsidered decision pursuant to SCC 30.72.065(5) because the Examiner's initial decision was not a denial but was an approval subject to conditions and the reconsidered decision is also an approval but subject to amended conditions.

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 **AUGUST 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

⁴ Added on Reconsideration
06126088A.doc

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: Paul Lichter

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.
--