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BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
EUGENE KULINOVSKY) **FILE NO. 06 127442 SD**
23-lot planned residential development (PRD))
subdivision on approximately 4.17 acres)

DATE OF DECISION: March 29, 2007

PLAT/PROJECT NAME: *Lakeside Terrace*

DECISION (SUMMARY): The proposed 23-lot planned residential development subdivision is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located 1508 S. Lake Stickney Drive, Lynnwood, Washington.

ACREAGE: 4.17 acres

NUMBER OF LOTS: 23

AVERAGE LOT SIZE: 4,906 square feet

MINIMUM LOT SIZE: 3,989 square feet

DENSITY: 5.6 du/ac (gross)
8.74 du/ac (net)

ZONING: R-7,200

UTILITIES:

Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No.1

INTRODUCTION

The applicant filed the Master Application on August 28, 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 was made on January 11, 2007. (Exhibit 13) No appeal was filed.

The Examiner held an open record hearing on March 14, 2007, the 137th 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 14, 2007 at 11:01 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Eugene Kulinovsky, was represented David Gipson of Harmsen & Associates. Snohomish County was represented by Michael Dobesh of the Department of Planning and Development Services.
3. Pre-hearing public comments had been received in writing from vicinity residents Rob and Kerry Smith (Exhibit 19), Katy Miller (Exhibit 20), Brian Geppert (Exhibit 21) and Paul Salo (Exhibit 22). Citizen testimony raising concern or opposition was given by Linda Dunham, Norm Hellbusch, Chris Nofer and Paul Salo.

The hearing concluded at 12:07 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 applicant, Eugene Kulinovsky, filed an application for a 23-lot planned residential develop subdivision on four acres zoned R-7,200 at 1508 South Lake Stickney Drive, Lynnwood. The development proposal includes an open lot for recreational use and a Tot-Lot. Roughly one-half (47%) of the site will be impervious surfaces. The site slopes gently toward Lake Stickney, which lies to the north beyond South Lake Stickney Drive. An 800 square foot wetland will be relocated as specified by a biologist. No significant, adverse environmental impacts are documented in this record. (See Critical Areas Study, Exhibit 6.)
3. The PDS staff report has 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.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC by the payment of \$1,244.49 for each new single-family home.
5. The 23 proposed dwellings will generate average weekday vehicular traffic of 221 trips, of which the 21 new dwellings (two already exist) will produce 16 morning peak-hour trips and 21 p.m. peak-hour trips. Those trips will be distributed from South Lake Stickney Drive primarily to Madison Way, Jefferson Way and Ash Way. The percentages of vehicular trip distribution to each of those three streets is presented and considered in the traffic study prepared by Gibson Traffic Consultants (Exhibit 5).
6. Some of the above-listed witnesses assert that the vicinity roads are overburdened at present and, thus, cannot absorb the additional trips. Although that impression is no doubt perceived by many local residents, the traffic study and staff analysis do not support denial or further conditioning of this proposal due to adverse traffic impacts. Witness Norm Hellbusch has lived on Lake Stickney for 17 years and submitted a photograph as part of Exhibit 33 showing a recent, severe two-car crash near his property on South Lake Stickney Drive. Despite that, the engineering analysis of record concludes that the vicinity roads can accommodate the added trips caused by the proposed subdivision.
7. Specifically, 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 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.
8. School mitigation requirements under Chapter 30.66C SCC have been reviewed and set forth in the conditions. Mukilteo School District No. 6 reports that the plat's students of all grades will be bussed to and from school via a school bus stop currently at South Lake Stickney Drive and 14th Place West. At the District's request, the applicant will install an asphalted, seven-foot walkway to 14th Place West. Because the District does not plan to use its vicinity property for a school, the record does not support a condition upon this plat for pedestrian access through the proposed subdivision to the school property, even though a walking path was once in existence there. Witness Brian Geppert is president of the Settler's Meadow Home Owners Association. His written argument (Exhibit 21) and his testimony is that the more than 40 home owners in Settler's Meadow would benefit from a pathway and from a joint effort with this applicant regarding the proposed "Tot-Lot". He is supported by the testimony of Kris Nover, current president of the Board of Directors of that Association. The preponderance of the evidence of record, however, does not support imposing such conditions in addition to the conditions already recommended in the staff report.

9. Witness Norm Hellbusch asserts that South Lake Stickney Drive will be flooded in storm events if the subject subdivision is constructed, as that Drive has flooded near his home since construction of the planned residential development on Ash Way. (See his related photograph at Exhibit 33.) He believes the County should condition such proposals using the 2005 Department of Ecology Manual. This Examiner concludes from the evidence of record that the greater distance of the subject subdivision from Lake Stickney and its associated wetlands does not warrant the same requirements as were imposed upon a recent proposal abutting those wetlands.
10. Vicinity resident Paul Salo expresses concern (Exhibit 22) about storm drainage. His home shares a property line of approximately 80 feet with this proposed subdivision. He points out that there are many natural springs in the Lake Stickney and Swamp Creek area which may, he asserts, "...add complexity to the management of natural rain water." 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. The Examiner trusts that Mr. Salo will be kept informed and involved as that review continues.
11. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
12. Public water and sewer service will be available for this development as well as electrical power.
13. 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, which is the case here.
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 request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17 and with the Planned Residential Development provisions of SCC 30.42B. The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.
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 request for a 23-lot Planned Residential Development Subdivision on 4.17 acres **CONDITIONALLY APPROVED**, subject to the following stipulations:

CONDITIONS

- A. The PRD official site plan/preliminary plat received by PDS on February 22, 2007 (Exhibit 11B & 11C) shall be the PRD official site plan and approved plat configuration. SCC 30.42B.220 governs changes to the planned residential development official site plan; 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 plattor 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 detailed landscape and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit 11M and in conformance with all required landscape standards for perimeter, streetscape and open space treatment, and shall include a significant tree retention plan.
 - iv. PRD covenants, deeds and homeowners' association bylaws and other documents shall have been submitted to and approved by PDS guaranteeing maintenance of open space, community facilities, private roads and drives, and all other commonly-owned and operated property. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS. To ensure permanent, ongoing maintenance of landscape areas, landscape maintenance covenants shall be prepared by the applicant and submitted together with documents otherwise required for maintenance of site improvements pursuant to SCC 30.42B.250.

- 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 No. 6 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 two existing parcel(s). Lot 1 and 2 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:

\$2,216.35 per lot for mitigation of impacts on county roads paid to the county,

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. 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. “All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include open play areas, picnic areas, recreation trail system, drainage facilities, benches and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed.”
 - v. The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
 - vi. In accordance with SCC 30.42B.150(1)(c) variation in front setbacks and building envelope shall be required to provide visually diversified streetscapes.
 - vii. In accordance with SCC 30.42B.150(1)(d), floor plans and street elevations shall reduce the visual impact of garage doors and emphasize the entry living space
 - viii. Dedication of five feet of additional right-of-way along the property’s frontage on S. Lake Stickney Drive.

- ix. Dedication of additional right-of-way that is tangent to the ultimate right-of-way on S. Lake Stickney Drive and Road "A" with a 25- radius curve.

D. Prior to recording of the final plat:

- i. Urban frontage improvements shall be constructed along the parcel's frontage on S. Lake Stickney Drive to the satisfaction of the DPW.
- ii. An off site walkway from the development to the bus stop located at a the intersection of S. Lake Stickney Drive and 14th Place W shall have been constructed to the satisfaction of the DPW.
- iii. 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 plattor 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.

NGPA 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.

- iv. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125.
- v. The features of the approved TDM plan shall have been constructed/installed.

E. In conformity with applicable standards and timing requirements:

- i. The preliminary landscape plan (Exhibit 11M) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. 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 29th day of March, 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 **APRIL 9, 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 **APRIL 12, 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: Michael Dobesh

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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