

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 06 129083 LU
CITY OF MARYSVILLE)	
)	
for a major revision of a conditional use permit)	
(02-106230) and a landscape modification for the)	
construction of a reservoir, communication tower)	
and equipment building)	

DATE OF DECISION: March 8, 2007

DECISION (SUMMARY): The major revision of the existing conditional use permit and the proposed landscape modification are **CONDITIONALLY APPROVED**.

BASIC INFORMATION

LOCATION: The subject property is located at 614 Lakewood Road, Arlington, Washington.

ACREAGE: 300 acres

ZONING: Rural-5 Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Rural Residential

UTILITIES:
Water/Sewer: City of Marysville

SCHOOL DISTRICT: Lakewood No. 306

FIRE DISTRICT: No. 12

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on September 21, 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 15, 16 and 17)

The Examiner held an open record hearing on February 21, 2007. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on February 21, 2007 at 2:02 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. The applicant, the City of Marysville, was represented by David Zull. Snohomish County was represented by Elbert Esparza of the Department of Planning & Development Services.
3. Vicinity resident Boyd Pepper appeared and submitted six colored photographs (Exhibit 26) of the subject site and his property adjoining. He acknowledged having granted a 30-foot easement across his pasture in the 1960's but expressed hope that the City would consider an alternate vehicular access that might meet the City's needs with less impact on Mr. Pepper's property. Mr. Zull said the City will consider the alternate access but has some concern about whether the alternate access would be impeded by required drainage facilities. The Examiner announced that he appreciates the City's good faith attempt to accommodate Mr. Pepper but would not require the alternate access as a condition upon approval due to the City's right to use the easement.

The hearing concluded at 2:22 p.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, 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 staff report is hereby adopted by the Examiner as if set forth in full herein.
3. In 2002, Snohomish County issued a conditional use permit (No. 02-106230) for construction of the now-existing water treatment facility and associated piping at the subject Edward Springs site. The requested revision to that permit is for addition of a .68-million gallon welded steel reservoir and communications tower to the Edward Springs facilities. The reservoir is needed in order to provide potable water to a rapidly growing number of households in the service area.
4. The sky-blue reservoir will be visually shielded from residential views by the abundant trees in the vicinity and by the slope of the land. In fact, the requested landscape modification is to accept the existing tree line to the west and vegetation and grasslands to the north as meeting any otherwise landscaping requirements. Code-required (Type A) landscaping will be installed around the perimeter of the project site. A six-foot increase in the diameter of the reservoir proposed at the hearing adds no significant impact given the size of the structure as originally proposed and in view of the visual shielding noted immediately above. Also, the staff recommends as a condition upon approval that any exterior lighting on the site be shielded so as not to cast any direct glare onto adjacent and nearby private properties and public roads.
5. Surrounding properties are zoned R-5. The subject site is 300 forested acres within the Edwards Spring Watershed. Surrounding uses are predominantly single-family residences, mostly on five-acre tracts.
6. The request will not generate impacts to the County's park system or the school system.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This 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.
8. 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).
9. 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.
10. The subject property is designated R-5 which allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
11. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.
12. A review of these CUP standards demonstrates that the proposal meets those standards and no adverse impacts to the vicinity will result from granting the major revision.

13. 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.
14. The request is consistent with the decision criteria applicable to a variance at SCC 30.43B.100 and meets the intent of the landscape requirements at SCC 30.25.020.
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 GMACP, GMA-based County codes, and the type and character of land use permitted on the site by the applicable design and development standards. The proposal meets the conditional use decisional criteria set out at SCC 30.42.100 and is extensively documented at pages four through six of the staff report.
4. The requested landscape modification provides as good or better buffering than would strict adherence to the landscaping requirements.
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 conditional use permit and a landscape variance are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The official site plan received by PDS on September 21, 2006 (Exhibit 2) shall be the official site plan, as amended to add six feet to the reservoir diameter. SCC 30.42B.220 governs changes to the official site plan. Access may deviate from that site plan if agreed to by abutting owner Boyd Pepper and the County staff without further Hearing Examiner proceedings.

- B. Any exterior lighting onsite shall be shielded so as not to cast any direct glare onto adjacent and nearby private properties and public roads.
- C. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

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 8th 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 **MARCH 19, 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 22, 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: Elbert Esparza

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.