

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 06 129952 LU
SNOHOMISH COUNTY SHERIFF)	
)	
Conditional Use Permit for the Construction of a))	
6,825 square foot vehicle impound facility)	

DATE OF DECISION: July 13, 2007

DECISION (SUMMARY): The requested conditional use permit with landscape modification is **CONDITIONALLY APPROVED with a precondition.**

BASIC INFORMATION

LOCATION: The subject property is located at 2825 77th Street NE, Marysville, Washington.

ACREAGE: 1.14 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5 (1 du/5 ac)

UTILITIES:

Water: Tulalip Utilities Authority

Sewer: On-site septic

FIRE DISTRICT: No. 12

INTRODUCTION

The applicant filed the Master Application on January 23, 2007. (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)

A SEPA determination was made on April 25, 2007. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on July 11, 2007, the 86th 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 11, 2007 at 9:03 a.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 Snohomish County Sheriff's Office, was represented by Mark Richardson. The Snohomish Regional Drug Task Force was represented by Pat Slack. The Tulalip Tribes were represented by Michelle Gettsy, Associate Planner.
3. No member of the general public attended the hearing, However, by pre-hearing letter received May 17, 2007, vicinity resident Jerry Connell raises concern about whether the proposed impound facility would threaten water quality of wells now serving homes in the vicinity by leakage of liquids from vehicles.
4. No one appeared in opposition to the request.

The hearing concluded at 9:34 a.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 applicant, the Snohomish County Sheriff's Office, filed an application for a conditional use permit for a government facility in the underlying R-5 zoning at the site addressed 2825 77th Street NE, Tulalip. The site is owned in fee simple by the County within the boundaries of the Tulalip Indian Reservation. The application is for use of the existing 2,843 square foot storage building and 1,350 square foot caretaker's quarters and existing and proposed associated driveways, parking and landscaping and to add a 6,825 square foot storage building. The purpose of the facility is to store impounded vehicles in support of the law enforcement mission of the Snohomish Regional Drug Task Force.
4. The chairperson of that Task Force, Pat Slack, testified that the proposed use is consistent with an inter-governmental agreement between the County and the Tulalip Tribes. Tribal Planner Michelle Gettsy expressed concern about the facility's compatibility with the surrounding residential uses but also noted that government facilities are permitted in the underlying zoning by the applicable Tribal regulations.
5. Mr. Slack pointed out that vehicles will be brought to or taken from the site seven to ten times per month so daily trips generated will be minimal. The County staff report notes that all vehicles will be indoors. The Examiner feels the evidence indicates at least short-term parking outside of the building and concludes that hazardous spill kits should be on site and the building should be designed with a catchment floor to prevent groundwater contamination by any leaking vehicle fluids. (See Condition below.)
6. Exhibit 5 describes in narrative and in photographs the existing landscaping on all sides of the site and the proposal to reduce the 20-foot depth of landscaping normally required to ten feet on three sides of the site in view of the screening already provided by existing large cedars. Gaps in the existing landscaping would be planted. Existing structures will screen the view of the new structure from the front of the site. (See Exhibits 9D and 9E.) No critical areas are on or within 100 feet of the subject site.
7. A conditional use application must be consistent with the comprehensive plan. In this instance, the GPP Future land Use Map designates the site Rural Residential 5 (RR5). That designation contemplates the presence of governmental facilities
8. The surrounding area is zoned R-5 and is developed with single-family residences. The well-screened government storage use is compatible with those surroundings and not materially detrimental to those uses.
9. The request will not generate impacts to the County's park system or the school system.
10. 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 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.
11. 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.
12. As noted above, 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.

13. 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.
14. 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.
15. A review of these CUP standards with the request, indicates that the standards are met and no adverse affects will be made to the area as a result of allowing a vehicle impound facility.
16. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
17. 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 specific 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, the permitted density and the applicable design and development standards.
4. Adequate public services exist to serve the proposal.
5. As conditioned herein, the conditional use will make adequate provision for the public health, safety and general welfare.
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 conditional use permit for a vehicle impound facility is hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

PRECONDITION

A record of developer obligations shall have been recorded with the County Auditor against the real property on which the development is proposed.

CONDITIONS

- A. The CUP Site Plan and conceptual landscape plan received by PDS on April 25, 2007 (Exhibits 9A, 9D and 9E) shall constitute the CUP official site plan. Any revisions to the CUP and/or development plan exhibits shall be in accordance with SCC 30.42C.110.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county a land use permit binder shall be filed for the subject decision.
- C. Prior to any certificate of occupancy:
 - i. A paved commercial approach per EDDS shall have been constructed.
 - ii. All landscaping shall be installed per the approved landscape plan, Exhibits 9D and 9E.
 - iii. Site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- D. The storage of impounded vehicles shall be fully enclosed within the storage structures. Those structures shall have floors designed to contain any fluid leakages from vehicles and there shall be spill clean up kits on hand in the structures at all times and employees shall be trained in use of those kits. The purpose of this condition is to avoid any contamination of surface or ground water on-site, in view of the proximity of vicinity wells serving residential households.
- E. 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 13th day of July, 2006.

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 **JULY 23, 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 **JULY 27, 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: Michael Dobesh

<p>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.</p>

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 JULY 13, 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)
