

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: February 5, 2007

PLAT/PROJECT NAME: *CLAIREMONT DIVISION 3*

APPLICANT/
LANDOWNER: Clairemont Division 2, LLC

FILE NO.: 06 130451

TYPE OF REQUESTS: **REZONE** of a 2.93 acre site from Residential-9600 (R-9600) to Residential-7200 (R-7200); a 15 lot **SUBDIVISION** utilizing the lot size averaging provisions of SCC 30.23.210 and a building setback **VARIANCE**.

DECISION (SUMMARY): **APPROVED** subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 22229 39th Avenue SE, Bothell, WA

ACREAGE: 2.93 acres

NUMBER OF LOTS: 15

AVERAGE LOT SIZE: 7,352 square feet

MINIMUM LOT SIZE: 4,429 square feet

DENSITY: 5.12 du/ac (gross)
5.92 du/ac (net)

OPEN SPACE: 9,630 square feet

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services (PDS): Approve subject to conditions
Public Works (DPW): Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on August 3, 2006. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 15, 2007.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on November 27, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on January 17, 2007, the 58th 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 January 17, 2007 at 2:32 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.

The hearing concluded at 2:45 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 the hearing 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. *Clairemont Division 2* (Applicant) seeks three approvals: to rezone a 2.53 acre tract at 22229 39th Avenue SE, directly east of the *Clairemont Division 2* subdivision, from R-9600 to R-7200, to subdivide the tract into 15 single-family lots, and for a zoning code variance for a building setback for an existing home which will remain.
4. Access to the tract will be from *Clairemont Division 2*, which lies to the west and abuts 39th Avenue SE. A new public road will be stubbed at the east boundary with a temporary cul-de-sac. No frontage improvements will be required.
5. All adjacent uses are zoned and used for single-family residences, except for a power line easement along the east boundary.
6. The site will generate an average of 124 new vehicle trips per day, with 10 in the a.m. peak hour and 13 in the p.m. peak hour. The proposal was certified as concurrent as of September 16, 2006.
7. Notice of the application was given as provided by ordinance. There were no comments from the public.
8. Applicant will be required to pay impact fees for schools, state highways, county roads, and possibly some city streets.
9. The development will provide pedestrian facilities throughout, and connect with *Clairemont Division 2*, which will provide safe walking conditions for children who walk to school or to a school bus stop.
10. A Category 3 wetland lies astride the eastern boundary of the site. That portion within the site will be filled. An additional buffer adjacent to the wetland will be provided as mitigation. Applicant has submitted a drainage concept whereby stormwater is collected and routed to an underground detention vault in *Clairemont Division 2*. A full drainage plan must be approved prior to site development.
11. The site is designated for Urban Low Density Residential (ULDR) uses in the comprehensive plan and is within an Urban Growth Area. The R-7200 zone is one of the implementing zones for this designation.
12. Houses in an R-7200 zone with an area of 7200 square feet or more must provide a setback from the street of 20 feet. The existing house on Lot 15 is the only house within the tract which has more than 7200 square feet in area. A variance to allow the lot to provide a 15 foot setback is requested, to make the setback the same for all houses on the street. Lot coverage for that house will be only 35% as opposed to the 55% maximum allowed under the lot size averaging provisions, which will compensate for the setback variance of this large lot.

13. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, 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 rezone approval criteria are set forth in SCC 30.42A.100. Staff concludes that the proposed rezone is consistent with the comprehensive plan and bears a substantial relationship to the public health, safety and welfare and should be approved. The Examiner concurs.
3. The criteria for approval of a preliminary plat are contained in Chapter 30.41A SCC and RCW 58.17.100-120 and .195. Staff's analysis of these criteria concludes that the proposal satisfies these standards and should be approved. The Examiner concurs.
4. The criteria for approval of a variance are set forth in SCC 30.43B.100. The staff's analysis of the criteria concludes that the request satisfies these standards and any event the setback modification is *de minimis*. The Examiner concurs.
5. The requests should be approved, subject to compliance with the following conditions:

CONDITIONS:

- A. The preliminary plat, received by Planning and Development Services (PDS) on December 13, 2006 (Exhibit 17), shall be the approved plat. Changes to approved preliminary plats are governed by SCC 30.41A.330.
- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county;
 - i. The applicant shall provide evidence that the temporary drainfield easement proposed on Lots 17 and 18 in the plat of *Clairemont Div. 2*, (file number 06-126176 SD) benefiting Lot 15 of the subject plat of *Clairemont Div. 3*, has been recorded with the county auditor.
 - ii. Per SCC 30.43B.120, a land use permit binder, on a form provided by PDS, shall be executed by the applicant and recorded with the County Auditor.
 - iii. The full drainage plan shall demonstrate that the drainage system within the plat of *Clairemont Div. 2* is capable of handling the stormwater flow from the subject plat.
- 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 Northshore School District 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 parcels. Lots 14 and 15 shall receive credit.”

ii. “The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit, as mitigation for impacts to the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued by August 3, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.”

iii. “Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit or double the amount for a duplex:

\$2,043.88 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E.

These payments are due prior to or at the time of each building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.”

iv. A temporary cul-de-sac turnaround easement shall be placed at the east end of the new public road (222nd Place SE).

D. Prior to recording of the final plat:

i. Pedestrian Facilities shall be constructed to the specifications of the county throughout the development in conformance with the TDM plan.

ii. The applicant shall provide evidence that Boundary Line Adjustment applications 06-126176-001 and 06-126176-002 BA have been approved by PDS and recorded with the county Auditor.

iii. The drainage system within the plat of *Clairemont Div. 2* (file number 06-126176 SD) shall be completed and the plat recorded.

iv. The Owner (or Homeowner’s Association) of *Clairemont Div. 2* shall provide written consent/easement for the use of their drainage system.

v. Clear delineation and agreement of Operations and Maintenance responsibilities and cost-sharing of the combined drainage system will need to be provided by the Owners (or Homeowner’s Associations) of both *Clairemont Div. 2* and *Clairemont Div. 3*.

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.

7. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The requests for a **REZONE** of a 2.93 acre tract at 22229 39th Avenue SE from R-9600 to R-7200, approval of a **PRELIMINARY PLAT** for 15 single-family lots, and approval of a **ZONING CODE VARIANCE** for the setback on Lot 15 are hereby **APPROVED**, **SUBJECT TO COMPLIANCE** by the applicant, with the **CONDITIONS** set forth in Conclusion 5, above.

Decision issued this 5th day of February, 2007.

Gordon F. Crandall, Hearing Examiner Pro-Tem

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 **February 15, 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 **February 19, 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 this case.

Staff Distribution:

Department of Planning and Development Services: Monica McLaughlin

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.