

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

In the Matter of the Application of)
)
PHOENIX DEVELOPMENT, INC.) **FILE NO. 06 134220 SD**
)
36-lot subdivision on 7.48 acres with concurrent)
rezone from R-8,400 to R-7,200)

DATE OF DECISION: October 5, 2007

PLAT/PROJECT NAME: *Vistante*

DECISION (SUMMARY): The proposed rezone to R-7,200 is **APPROVED** and the proposed subdivision is **DENIED**.

BASIC INFORMATION

GENERAL LOCATION: This project is located on the northwest side of Larch Way at 153rd Place SW, about one mile west of Mill Creek, Washington.

ACREAGE: 7.48 acres

NUMBER OF LOTS: 36

AVERAGE LOT SIZE: 6,884 square feet

MINIMUM LOT SIZE: 4,117 square feet

DENSITY: 4.81 du/ac (gross)
6.33 du/ac (net)

ZONING: CURRENT: R-8,400
PROPOSED: R-7,200

UTILITIES:
Water/Sewer: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

INTRODUCTION

The applicant filed the Master Application on March 12, 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 19, 20 and 21)

A SEPA determination was made on July 2, 2007. (Exhibit 16) No appeal was filed.

The Examiner held an open record hearing on September 11, 2007, the 104th 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 September 11, 2007 at 9:04 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. The applicant, Phoenix Development, Inc., was represented by Loree Quade of that entity and by Ken Lauzen of the Blueline Group. Snohomish County was represented by Bob Pemberton of the Department of Planning and Development Services.
3. Members of four vicinity households submitted pre-hearing documents expressing concern or opposition: Brian Glazebrook (Exhibit 24), Shara Svendsen (Exhibit 26), Bill & Linda Winter (Exhibit 23) and Jerry Zylstra (Exhibit 25). Of those, Shara Svendsen and Jerry Zylstra appeared and testified at the hearing, as did vicinity residents Kendra Hayward and Vickie Kozuck.

The hearing concluded at 10:10 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 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 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). But for differences described below, that staff report is hereby adopted by the Examiner as if set forth in full herein.
3. The applicant, Phoenix Development, Inc., filed an application for a rezone of 7.48 acres from R-8,400 to R-7,200 with a concurrent application to construct thereon a 36-lot subdivision using lot size averaging. The subject site is located on the west side of Martha Lake on the northwest side of Larch Way at 153rd Place SW, approximately one mile west of Mill Creek. There are no critical areas on or near the subject site. The Alderwood Water and Wastewater district will serve the proposed subdivision with public water and sewers. Properties to the north and south are zoned R-8,400 and developed with low-density suburban residential uses. To the west is a newer single-family residential subdivision developed at R-9,600 zoning. To the east are larger, single-family residential lots between Larch Way and Martha Lake.
4. The subject site lies between Larch Way and the easterly dead-end terminus of 153rd Place SW. The applicant proposes to align the internal plat road with 153rd Place SW, thereby opening 153rd as a through street. If so opened, 153rd Place SW would connect Larch Way along Martha Lake with Meadow Road, which parallels Interstate 5 roughly from 128th Street SW (SR 96) on the north to 164th Street SE on the south. The Examiner takes official notice that those two arterials connected by Meadow Road carry some of the heaviest average weekday traffic loads found anywhere in Snohomish County.
5. The homes of the long-established single-family residential neighborhood of Lakeview Manor lie along existing 153rd Place SW. The above-listed vicinity residents (hereinafter "the neighbors") urge that 153rd Place SW not be extended through the proposed subdivision to become a through connection between Larch Way and Meadow Road.
6. The proposed 36-lot subdivision's weekday vehicle trip generation is computed for concurrency purposes as 282 daily trips, of which 22 trips are a.m. peak hour trips and 30 are p.m. peak hour trips. (Exhibit 10, p. 3) However, in order to examine the impact of converting 153rd Place SW to a through street, it is more accurate to include the subject site's five existing homes' trips also. So viewed, total trips generated by the proposed Vistante subdivision are 345 daily vehicular trips.
7. The neighbors assert that the 345 daily trips generated by the 36 proposed homes is only a small part of the trips to be added to their neighborhood if 153rd Place SW is opened as a through street. The greater quantity of new trips, they argue, will be trips to and from the approximately 200 existing homes and proposed developments north of Martha Lake on both sides of Martha Lake Airfield Community Park. They assert that residents there will choose the new, third route to and from the north end of the lake. The only two north/south options at present are to travel along the east side of the lake or, on the west side of the lake, to use King Place as the only linkage of Larch Way and Meadow Road between 146th Street SW on the north and 164th Street SE on the south. The neighbors estimate that two-thirds to three-quarters of those trips will be seeking an east/west route to and from Alderwood Mall and Interstate 5, with the

remainder mostly destined to and from the south to Mill Creek. (Those percentages of trip distribution may not correlate with tables in the Traffic Impact Study, Exhibit 10.) In addition, the neighbors point out that developments are proposed along Meadow Road for more than 300 additional homes. In summary, the neighbors foresee at least 536 additional homes served by their neighborhood street – 153rd Place SW – if opened as a through street. At 9.57 weekday trips per home, 536 homes generate 5,130 trips daily. If 75 percent of those trips are on newly-opened 153rd Place SW, the trips will total 3,847 daily through the neighborhood of Lakeview Manor.

8. The neighbors point out that those 3,847 trips daily through a neighborhood would be on a street that has been a dead end street for nearly the past 30 years (since about 1980), that has a three-way intersection with no stop sign at 9th Place W, that has no curbs, gutters or sidewalks anywhere, that has many children, and where the posted 25 miles-per-hour speed is violated often. The concurrency evaluation (Exhibit 10) for this proposed development mentions none of that. The staff report to the Hearing Examiner states summarily that the proposal meets the applicable Snohomish County Code Title 13 and 30.66B.
9. The neighbors point out that drivers will tend to heavily use the proposed through street in order to avoid the narrow, curving Larch Way with no sidewalks. (Testimony of Shana Svendsen) Drivers now enter 153rd Place SW and ask if it leads to a through street. (Testimony of Jerry Zylstra) Neighbors Bill and Linda Winter write concerning Larch Way:

“We live just a block or two south of the proposed Vistante Subdivision #06-134220-SD We have serious concerns about the amount of additional vehicular traffic that will be added to Larch Way as a result of an additional 36 homes. There are no sidewalks on that section of Larch Way, from 164th St. SW to Lakeview Rd., and most of the length has no shoulders. One area, near King Pl., has a dangerously steep drop off on the east edge where it is sometimes necessary to slow to a stop when meeting a school bus or a large truck as there simply is not enough room to safely navigate. We can’t count the number of times we have had to replace our mail box because of vehicular damage due to the narrowness of the road. The speed limit of 25 mph is neither adhered to nor enforced. There is much pedestrian traffic, especially in the summer....”(Exhibit 23)

10. Vicki Kozuck testifies that she has lived in the vicinity only since last December but notes that it is dangerous to walk on Larch Way. Kendra Hayward of 9th Place W. asks if traffic calming devices such as islands or speed bumps could be required here. Shana Svendsen testifies that park or recreational space is needed within the proposed subdivision because walking to any park is too dangerous. The applicant responded that the lid of the detention vault could be landscaped as open space and offered at the hearing to do so as a private amenity lawn and tot-lot for Vistante residents. In addition, 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.
11. The applicant’s representative testifies that if 153rd Place SW is not opened as a through street, a temporary cul-de-sac would have to be added to the plat and a deviation from the DPW would have to be requested for the presently shown length of cul-de-sac road because of fire access issues. He also notes that the DPW favors connectivity where possible.

12. The Edmonds School District reports (Exhibit 29) that students of all grade levels will be bussed to and from school from specified bus stops. The staff report notes that one of those stops is 300 feet north of the frontage improvements required herein and another is 400 feet south of the frontage improvements. Therefore, 700 feet of offsite walkways on Larch Way for students would be required of the applicant.
13. 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. That review is focused on arterials. There is no analysis in this record of traffic impacts upon 153rd Place SW.
14. Witness Jerry Zylstra surveyed neighbors before submitting evidence into this record and in the pre-hearing document by him and Karen Zylstra (Exhibit 25) their first numbered paragraph states:

“We would not be against the rezone from 8400 to 7200 as long as there was no use of lot size averaging and all lots met the 7200 square foot minimum.”
15. The quote above demonstrates concern about compatibility with the existing Lakeview Manor in addition to vehicular traffic concerns. No evidence in this record compares the number of new homes that could be built under the existing zoning here with the increased number of homes in the proposed Vistante if rezoned. Likewise, the number of lots added due to lot size averaging is not calculated in this record. However, it is uncontested that the surrounding community is built to lot sizes required by R-9,600 and R-8,400 zoning. That is, the existing lots tend to be larger than would be constructed in Vistante. However, the applicant points out that most of the lots on Vistante’s perimeter are of approximately 6,000 square feet. That is verified by the plat map and rezone plan at Exhibit 17A, sheet 1.
16. The neighbors allege an abuse of lot size averaging when, as here, owners reserve a few very large lots in order that more lots may be achieved by averaging throughout the remainder of the plat. Here, the Zylstras point to a 22,000 square-foot lot with a 9,000 square-foot lawn and another lot of 15,000 square feet and the use of “sale and buy-back” to “manipulate lot sizes”. (Exhibit 25) The Zylstras opine that, even if such manipulation is legal, it should be of concern to the County. The Examiner leaves that issue to the legislative process and must apply the law as it exists. It is undisputed in this record that the Code allows lot size averaging (SCC 30.23.210). The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with those provisions.
17. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
18. The proposed use (single-family detached development) is essentially compatible with existing single-family detached developments on larger lots. Because the property is within a UGA, where policies promote urban densities of development, a comparison with the present lower density character of much of the area is inappropriate since the present density of development in much of the surrounding area is inconsistent with both the adopted comprehensive plans and the present zoning.

19. 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.
20. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished. Public water and sewer service and electrical power will be available for this development. (See Finding No. 3 above.)
21. Issues raised in this record about wildlife, plants, noise and water quality impacts to Martha Lake are not supported by substantial evidence and are not considered.
22. 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 and should be approved.

23. 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.
24. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report adopts said staff report to the extent that the staff report contains any language constituting a conclusion of law consistent with this decision.

As to the proposed subdivision:

2. The proposed subdivision complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC as well as the State Subdivision Code, RCW 58.17 in that it makes appropriate provisions for open spaces, drainage 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. The request is consistent with (1) the 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. However, as proposed with 153rd Place SW opened as a through street, the record does not demonstrate appropriate provision for the public, health, safety and general welfare. The applicant has not met the burden of demonstrating that the existing, abutting community of Lakeview Manor has transportation infrastructure capable of reasonably accommodating the anticipated average weekday trips that would result from the opening of that street as a through street.

3. Further, it is concluded that although the evidence of record marginally supports a determination that Larch Way can accommodate the additional average weekday trips generated by Vistante's 36 households, the record does not support that determination as to Larch Way's capacity to accommodate any additional trips that would be drawn to Larch Way via the proposed linkage of Larch Way and Meadow Road via 153rd Place SW. For example, drivers who would otherwise use East Shore Drive or 2nd Place W to and from 164th Street SE might prefer the route on the west side of Martha Lake (Larch Way) given the proposed connection to Meadow Road via 153rd Place SW.
4. For the reasons stated above, it is concluded that it would not be consistent with the Comprehensive Plan's page LU-15 to open 153rd Place SW as a through street because to do so would not respect the vitality and character of that established residential neighborhood because it would not be a sensitive integration of Vistante into the existing community. As such, the proposed subdivision would not serve the public use and interest as required by RCW 58.17 and SCC 30.41A. The plat must be redesigned to account for the single access and the length of the internal roadways due to the lack of the opening of 153rd Place SW as a through street.

As to the rezone:

5. The Snohomish County decision criteria for a rezone are set out at SCC 30.42A.100 and require that this proposed rezone (1) be consistent with the Comprehensive Plan and (2) bear a substantial relationship to the public health, safety and welfare.
6. A preponderance of the evidence of record establishes that the primary concern of vicinity neighbors herein is the impact of opening the through street, not the greater density allowed by the proposed rezone. The proposed rezone to R-7,200 does not result in the density of, for example, a rezone to LDMR. Some evidence is in the record indicating that Larch Way should not be burdened with any further daily traffic at all but that evidence is not persuasive. The applicant has met the burden of demonstrating that the existing local streets can absorb the traffic generated by the proposed 36 homes. The Examiner concludes that the rezone is consistent with Comprehensive Plan Policies LU 1.A.4 and 2.A.3 as well as HO Policy 2.A.1.
7. Any conclusion in this 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 rezone from Residential-8,400 to Residential-7,200 is hereby **APPROVED** and the proposed preliminary plat is **DENIED**.

Decision issued this 5th day of October, 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 **OCTOBER 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 **OCTOBER 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 the case.

Staff Distribution:

Department of Planning and Development Services: Bob Pemberton

<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>
