

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 04-110343-001 SD
THE LEAVITT COMPANIES, INC.)	
)	
Major Revision to existing plat/PRD of)	
<i>Greenleaf at Snohomish Cascade Sector 7, Div. 2</i>)	
)	
To add a new tract for a sanitary sewer pump station and)	
to make minor lot line adjustments to provide pedestrian)	
access to Tract 802 and improve view corridors.)	

DATE OF DECISION: January 22, 2008

PLAT/PROJECT NAME: Greenleaf at Snohomish Cascade Sector 7, Div. 2

DECISION (SUMMARY): Approved with Conditions

BASIC INFORMATION

GENERAL LOCATION: This project is located approximately 400 feet southwest of the intersection of 79th Avenue SE and 132nd Place SE, currently shown as Tract 901 (future development tract) on the plat of *Greenleaf at Snohomish Cascade*. The property is located within Section 35, Township 28, Range 5 East, W.M. of Snohomish County, Washington.

ACREAGE: 34.06 acres

NUMBER OF LOTS: 23

AVERAGE LOT SIZE: 10,496

MINIMUM LOT SIZE: 8,672

DENSITY: .83 du/ac (gross)
3.62 du/ac (net)

ZONING: PRD-9,600 with contract rezone

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6-du/ac)
Subarea Plan: Cathcart-Maltby-Clearview
Subarea Plan Designation: Master Planned Community/Environmentally Sensitive

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

INTRODUCTION

The applicant is requesting a major modification to a previously approved Preliminary Plat/PRD at *Greenleaf at Snohomish Cascade, Sector 7, Division 2*. The purpose of the major modification is to add a new tract at the request of the Silver Lake Water District for a future sewer lift station, which will serve the County’s regional landfill site located immediately adjacent to the subject property. In addition, the applicant proposes to make minor adjustments to lot and tract boundaries to provide access to Tract 802, and to provide better view corridors for some lots. The total number of single family residential lots remains the same at 23 lots.

The approved Preliminary Plat/PRD decision for this development was issued by the Hearing Examiner on July 6, 2006. (Exhibit 16) Given the limited scope of the issues presented by this major modification request, the Hearing Examiner re-adopts the Preliminary Plat/PRD decision dated July 6, 2006, and incorporates it herein as if set forth in full. The Examiner modifies only the following provisions of that decision, relating to the current proposal by amending or adding the following provisions:

The applicant filed the Master Application on July 10, 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 21, 22 and 23)

A SEPA determination was made on November 2, 2007. The Department issued an Addendum to the Determination of Nonsignificance. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on December 6, 2007. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on December 6, 2007 at 9:30 a.m.

1. The Examiner stated that she had read the PDS staff report, reviewed the file and viewed the area.
2. The Leavitt Companies, Inc. were represented by Paul Leavitt and by Jack Molver of David Evans & Associates, Inc. Snohomish County was represented by Monica McLaughlin of the Department of Planning and Development Services. The Silver Lake Water District was present and represented by Patrick Curran.

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

The following additional findings of fact are entered, based on the exhibit, testimony and record in this matter:

1. The master list of exhibits and witnesses, including the testimony received at the open record hearing, which is a part of this file and which were considered by the Examiner is hereby made a part of this decision as if set forth in full herein.
2. The PDS staff report (Exhibit 38) 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 unless otherwise stated below.
3. Paragraphs 3, 4, 5, 6, 8, 9, 10, 11, 12, and 13 of the July 6, 2006 Hearing Examiner's decision conditionally approving the PRD/plat for this project (Exhibit 16) are adopted herein as if set forth in full.
4. Paragraph 7 of Exhibit 16 is hereby amended to read as follows:

The proposed Critical Area Study (Exhibit 15) and Mitigation Plan (Exhibit 16) propose adequate mitigation for impacts to critical areas on the site as described in the Staff Report (Exhibit 38) in conformance with the Snohomish County Code. PDS has reviewed the revised Critical Areas Study (Exhibit 15) and Mitigation Plans (Exhibit 18) submitted with the application for the major modification and has determined that the project can comply with county Critical Areas Regulations (CAR). There are four Category 3 wetlands and 2 Type 4 streams on the property. One 1,053 square foot wetland, "Wetland Q", is to be filled to accommodate one of the lots, which is allowed by code (non-riparian Category 3 wetlands less than 5,000 square feet in size are allowed to be filled pursuant to best management practices under the provisions of SCC 30.62.360). The other three wetlands are to be preserved and placed within Native Growth Protection Area (NGPA) tracts. However, a portion of one of the wetlands "Wetland N" located at the bottom of a ravine in the northwest portion of the site will be temporarily impacted by a rehabilitation project to remove an existing culvert and surrounding fill material associated with an abandoned logging road. The buffer of this wetland will also be impacted by installation of a biofiltration swale. Installation of a sewer force main will temporarily impact the buffer of "Wetland R" in the southern portion of the site. Additionally, approximately 6,824 square feet of the buffer of "Stream 1" and 120 square feet of the stream channel will be permanently disturbed due to conversion of the area in the northeast corner of the site into a sewer lift station. The applicant is utilizing Innovative Development Design per SCC 30.62.370 and has demonstrated that the criteria for approval under SCC 30.62.370(2) are met. The applicant proposes to mitigate construction impacts through wetland rehabilitation and restoration, setting aside additional land for Native Growth Protection Areas, by planting native trees and shrubs within the NGPAs, and by purchasing 325 square feet of wetland creation credits from the Snohomish Basin Mitigation Bank. PDS believes critical area impacts have been significantly reduced from the original application due to relocation of the sewer force main.

5. The project as modified continues to meet the requirements of Chapter 30.42B SCC. In particular, the development meets the requirements of SCC 30.42B.040 relating to net density. Here, the maximum net density is 2.79 d.u. per acre, which does not exceed 9 d.u. per acre maximum established in the County Code.

6. The development proposal meets all of the general design criteria specified in SCC 30.42B.100.
7. The total open space provided by the proposal (20.18 acres) meets the 20% gross site area requirement set forth in SCC 30.42B.115. In addition, the development proposal exceeds the requirement for usable open space (.32 acres) by providing .56 acres of usable open space. Total open space shall be permanently placed in a separate tract(s). No areas of usable open space are less than 20 feet wide. Usable open space shall be accessed by all-weather pedestrian pathways and/or sidewalks from all lots and dwellings within the PRD. All usable open space is accessible by the sidewalk system within the PRD. Thirty percent of the usable open space is to be developed for active recreation uses. The applicant is providing 13,987 square feet of active open space, which exceeds the minimum requirement of 7,277 square feet for this development.
8. The Hearing Examiner finds that the development proposal meets the requirements of SCC 30.42B.125, SCC 30.42B, SCC 30.42B.130, SCC 30.42B.135, SCC 30.42B.140, SCC 30.42B.145, SCC 30.42B.150 and SCC 30.42B.200 as further described in Exhibit 38.
9. 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.
10. 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 relationship to 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 revised proposal 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 of the Leavitt Companies, Inc. for a major revision to the approved development known as *Greenleaf at Snohomish Cascade, Sector 7, Division 2*, an existing 23-lot Planned Residential Development Subdivision on 34.06 acres, is **CONDITIONALLY APPROVED**, subject to the following conditions, which amend and supersede the conditions imposed in the Hearing Examiner's decision dated July 6, 2006:

CONDITIONS

- A. The Preliminary Plat shown in Exhibit 19B, received by PDS on October 26, 2007, shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on October 26, 2007 (Exhibit 19E) and Detailed Landscape and Recreation approved per condition B. i., below, shall constitute the PRD Official Site Plan.

- B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:
 - i. 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 18E & F and in conformance with all required landscape standards for perimeter, streetscape and open space treatment.

 - ii. The applicant 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 Final Mitigation Plan shall be submitted to PDS for review and approval based on the Critical Areas Study by David Evans and Associates, Inc., revised October 2007 (Exhibit 15).

 - iv. A letter of credit release shall have been obtained from the Snohomish Basin Mitigation Bank and provided to PDS.

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
 - i. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:
 - \$2,162.82 per lot for mitigation of impacts on county roads paid to the county,

 - \$140.83 per lot for mitigation of impacts on City streets for the city of Mill Creek paid to the City. Proof of payment shall be provided.

 - \$75.75 per lot for Transportation Demand Management (TDM) paid to the County,

These payments are due prior to or at the time of building permit issuance for each SFR. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the lot(s) therein. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

 - ii. All development within the plat is to be consistent with the PRD Official Site Plan approved under file number 04-110343 SD.

- iii. “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 any open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, 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.”
- iv. “The dwelling units within this development are subject to park impact fees in the amount of \$1,128.00 per newly approved dwelling unit, as mitigation for impacts to the Snohomish 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 December 21, 2009 (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.”
- v. “The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish 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.”
- vi. 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 32.10.110(29)(a), (c), and (d) are allowed when approved by the County.”
- vii. In accordance with SCC 30.42B.150(1)(d), floor plans and street elevations of the proposed single family homes in the plat shall be designed to reduce the visual impact of the garage doors and emphasize the entry living space.

D. Prior to recording of the final plat:

- i. The applicant shall submit to PDS covenants, deeds, and homeowners’ association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. 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.
- ii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved unless PDS approves deferral until building occupancy and a bond or other guarantee of performance is submitted to and accepted by PDS.
- 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 platlor 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. Critical area and buffer mitigation shall have been satisfactorily installed per the approved final mitigation plan.
- v. Pedestrian Facilities shall be constructed to the specifications of the DPW throughout the development.

E. Prior to occupancy of any unit in the PRD:

- i. The applicant shall provide a maintenance bond for required landscape improvements, in an amount and form satisfactory to PDS.

Preliminary plats which are approved by the county are valid for five (5) years from their effective date and must be recorded within that time period unless an extension has been properly requested and granted pursuant to Section 30.41A.300.

Decision issued this 22nd day of January, 2007.

Millie Judge, Pro Tem 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 **February 1, 2008**. 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 5, 2008** 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: 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.
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