

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 6, 2008

PLAT/PROJECT NAME: **STARLITE CREST – (REVISED PROPOSAL)**

APPLICANT/
LANDOWNER: Starlite Construction, LLC

FILE NO.: 06-134002 LU

TYPE OF REQUEST: LDMR official site plan approval

DECISION (SUMMARY): **APPROVED SUBJECT TO A PRECONDITION AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: This project is located south of 2232 177th Place SW and 900 feet north of the Maple Road and Alder Way intersection in Lynnwood.

ACREAGE: 2.84 acres

NUMBER OF UNITS: 26

ZONING: Low Density Multiple Residential (LDMR)

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Medium Density Residential (6-12 du/ac)

UTILITIES:
Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Edmonds No. 15

FIRE DISTRICT: No. 1

INTRODUCTION

The applicant filed the Master Application on June 1, 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 14, 15 and 16)

A SEPA determination was made on September 6, 2007. (Exhibit 13) No appeal was filed.

An earlier hearing on this matter was held on November 13, 2007. Deputy Examiner Ed Good entered An Order dated January 9, 2008, which directed that the open record hearing be continued until February, 20, 2008.

The Deputy Examiner Ed Good held the continued open record hearing on February 20, 2008. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.

PUBLIC HEARING

The public hearing commenced on February 20, 2008 at 10:33 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and viewed the area.
2. Notice of the continued open record hearing was provided in the January 9, 2008, decision which was distributed to Parties of Record
3. Daniel Roupe represented the applicant. Snohomish County was represented by Paul Lichter, PDS.
4. Appearing and giving testimony under oath were Paul Lichter, Daniel Roupe, Jillian Yuhas, Patrick McGraner, Edward Koltonowski, Norm Stone and John Veneer.

The hearing concluded at 11:47 a.m.

By stipulation dated March 24, 2008, the applicants consented to having the examiner pro tem listen to the audio recording of the hearings and render a decision on the matter. Pursuant to said stipulation, James A. Densley, Hearing Examiner Pro Tem, has listened to the audio recordings and reviewed the file and exhibits made part thereof and rendered this decision.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner. 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.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The Findings and Conclusions of the order entered January 9, 2008, are hereby adopted, except as specifically noted. Said findings and conclusions are incorporated by reference into this decision and will not be repeated.
2. Since the entry of the January 9, 2008 Order, the applicants have filed a revised site plan. (Exhibit 41) The revisions include the following:
Unit 10 has been deleted, resulting in a total unit count of 26 units;

The six single-family units located along the east boundary, have been replaced with three duplex buildings, six units;

Over 11,000 square feet of open space has been created in the southeast portion of the site. This open space area includes a tot-lot, a grassed play area, perimeter landscaping and perimeter fencing; and Adjacent to the open space area, five guest parking places have been created. (Exhibit 36)

3. The Starlite Crest project, while vested under the LDMR rules of June 1, 2007, has added some amenities of the type required by the current rules, such as:
 - Widening the street from 20 feet to 24 feet;
 - Adding rolled curb and gutter to both sides of the street;
 - Making the driveway for each residence 19 feet;
 - Providing a two car garage for each unit;
 - Building two story houses to be compatible with the surrounding pattern of home construction. (Exhibit 37)
4. Testimony and documentation presented at the hearing of February 20, 2008, show that the standard for approval of this project is not the same as for a rezone.
5. Finding 1 of the January 9, 2008, Order is amended to reflect that the pending application is for an official site plan approval as part of a Commercial Building permit application, not a subdivision.
6. Finding 2 of the January 9, 2008, Order is amended to reflect the revised site plan for 26, rather than 27 units.
7. Finding 3 of the January 9, 2008, Order is amended to show that Jillian Yuhas was a vicinity resident rather than a witness at the November 13, 2007 hearing. She testified as a witness at the February 20, 2008 hearing.
8. The comments of Deputy Hearing Examiner Ed Good are amended to show that he conducted his site visit on a weekend prior to the November 13, 2007 hearing. This weekend visit, rather than a weekday visit is important because the heavy traffic conditions noted by the Deputy Examiner are not reflective of the concurrency counts considered by the County for typical commuter week-day peak periods. The period of time observed by the Deputy Examiner was near a major regional shopping mall during the Christmas rush period on a Sunday. According to PDS, weekend counts are not accurate in terms of predicting traffic impacts. (Exhibit 44)
9. Regarding Finding 5 of the January 9, 2008 Order, the Examiner makes the following addition and amendment: Intersection sight distance (ISD) is also known as entering sight distance. ISD is the desirable sight distance needed for a vehicle to enter the roadway and speed up to the 85th percentile of the roadway speed before an approaching vehicle at the 85th percentile speed would need to alter its speed. It is the sight distance needed as not to impact the capacity of the highway. For the safety of a roadway, the Safe Stopping Distance (SSD) is so that an approaching vehicle can safely stop under control under non-ideal conditions if there is an obstruction in the road. The proposed intersection exceeds the safe stopping sight distance needed for a 30 MPH speed roadway. Therefore, the deviation is not a health safety deviation, rather only a capacity deviation on a low volume roadway posted at the speed limit of 25MPH. (Exhibit 39)
10. Regarding Finding 6 of the January 9, 2008, order, the Examiner makes the following addition and amendment: The deviations requests and director's approval are part of the record. According to Snohomish County Code, the County engineer's approval of deviations is final and not subject to review by the hearing examiner. EDDS 1-05.

11. Regarding Finding 7 of the January 9, 2008 Order, the Examiner makes the following addition and amendment: The deviations requests and director's approval are part of the record. According to Snohomish County Code, the County engineer's approval of deviations is final and not subject to review by the hearing examiner. EDDS 1-05.
12. Finding 10 of the January 9, 2008 Order is clarified to reflect that the Edmonds School District may want to consider use of the same bus stop for all grades rather than the same bus.
13. The applicant is proposing to construct frontage improvements along Alder Way as it abuts the subject parcel. These improvements include curb, gutter and 5 foot sidewalks. This is a deviation from EDDS standards since the pavement is 5 feet instead of 7 feet and the planting strip is eliminated. The Examiner finds that such a configuration will match the conditions to the sidewalk directly to the south of the project and still provide safe walking conditions. While the project is filed as a commercial application with the requirement for 7 foot wide sidewalks, the 5 foot wide sidewalks are acceptable for the following reasons: the actual use of the project is for residential purposes, which allows 5 foot sidewalks, the 5 foot sidewalks will match up with the sidewalks which go to the south of the property, widening the road more is not feasible because of the wetland on the opposite side of Alder Way.
14. Concerning the painting of a stripe along the roadway of Alder Way as it runs to the north of the subject parcel, the Examiner finds that that part fronts upon another development which for some reason was not required to make roadway frontage improvements which included sidewalks. The painting of the stripe is to divide walking areas from road areas. While the stripe is not a perfect solution to separate pedestrians from cars, is an improvement over the current situation and an appropriate off-site improvement for this development.
15. Finding 12 of the January 9, 2008 Order is amended to provide the additional language; "All the engineering studies, EDDS deviations, concurrency determinations and accident data in the record support approval of the application. There is no interlocal agreement between the county and the City of Lynnwood regarding this roadway. The city of Lynnwood did not raise a protest to the traffic impacts of this development."
16. Finding 13 of the January 9, 2008 Order regarding the buffer for the large wetland associated with Swamp Creek west across Alder Way, is amended to include that the Examiner finds that the wetland is a Category 1. This category wetland usually has a buffer in which development is prohibited. Parts of the current project will be built within the buffer. However, the Examiner also finds that Alder Way, a county road right-of-way, runs along the buffer between the wetland and the subject parcel. Alder Way was constructed in a period of time prior to the Critical Areas Ordinance. PDS determined that additional buffer on the far side of Alder Way would not serve to protect the wetland. The Examiner adopts such determination and will not extend the protected buffer restrictions into the proposed development under consideration by this decision. The applicant will be conducting work within 200 feet of this wetland, but all on the far side of Alder Way from the wetland.
17. Regarding drainage issues addressed at Finding 15 of the January 9, 2008 Order, the following language is added: "Snohomish County Code requires compliance with the adopted drainage manual. The adopted manual is the 1992 Ecology Stormwater Management Manual for the Puget Sound Basin, Volumes I-IV, together with the September 21, 1998, adopted Snohomish County Addendum. Consequently, the proposed detention system has been designed in conformance with the manual."
18. Regarding drainage issues addressed at Finding 16 of the January 9, 2008 Order, the Examiner notes that the applicant prepared and filed a Targeted Drainage Report for Starlite Crest. (Exhibit 43) That

document acknowledges that there will be impacts on the areas within 1/4 mile downstream. The impacts are covered by recommended CIP projects. It also provides “that upon discussions with Snohomish County, it is our understanding that there are several key factors which will affect the amount of impact that this project will have on the downstream system.” First, the wetland area located opposite the site on the west side of Alder Way is actually a regional detention facility. Second, the area tributary to this regional facility is approximately 5,700 acres. The Starlite Crest site is comprised of 2.86 acres of tributary area. This constitutes 0.05% of the total area tributary to the regional facility. Thus, the proposal for the project to minimize the impacts to the downstream system includes providing on-site detention which will release flows at or below existing rates. The flows are tributary to a regional detention system, and the site is very small in comparison to the overall regional basin. No downstream flooding below the 100 year, 24 hour event threshold has occurred within a quarter mile of the project. The County engineer and Stormwater Management have stated that the use of the larger 2.5 detention volume safety factor is unnecessary, as the project will have a negligible impact on the downstream drainage systems. Consequently the standard detention volume safety factor of 1.3 has been employed per SCC 30.63A.210 (1)(c)(i).

19. Conclusion 3 of the Order of January 9, 2008, is amended to reflect that the application for this project was filed before the effective date of Amended Ordinance 07-022. Therefore, the criteria of General Policy Plan at LU-15 is not applicable to this decision.
20. Any finding of fact above which should be deemed a conclusion of law 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 has jurisdiction to hear this matter and render a decision thereon.
2. The **revised proposal** is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. Adequate public services exist to serve the **revised proposal**.
4. With the recommended conditions, the **revised proposal** would make adequate provisions for the public health, safety and general welfare. The **revised proposal** adequately addresses traffic impacts, safe walking conditions for students including sidewalks along Alder Way as it fronts upon the parcel, critical area buffers, and storm water drainage.
5. 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 **STARLITE CREST** LDMR site plan **REVISED PROPOSAL** is **APPROVED** subject to the following pre-condition and conditions:

PRE-CONDITION

- A. 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 Revised LDMR Official Site Plan (Exhibit xxx) received by PDS on February 12, 2008 shall be the official site plan and approved configuration.
- B. Prior the Issuance of any Building Permit;
 - i. \$2,555.19 per unit shall have been paid to Snohomish County as mitigation for project impacts on road system capacity within Transportation Service Area “D”.
 - ii. \$75.75 per unit shall have been paid to Snohomish County for Transportation Demand Management within Transportation Service Area “D”.
 - iii. \$1,244.49 per unit shall have been paid for mitigation to parks and recreation.

Per unit school impact fees for the Edmonds School District No 15 based upon the certified amount according to the Base Fee Schedule in effect for the Edmonds School District No. 15, at the time of future building permit submittal and collected at the time of building permit issuance for each proposed unit.

These payments are due prior to or at the time of each building permit issuance. Once building permits have been issued all unit mitigation fees shall be deemed paid by PDS.

- C. Prior to occupancy/final of any building:
 - i. Frontage improvements conforming to county standards, as may be modified by any granted deviation to the standards, shall have been installed along the Alder Way frontage.

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.

ORDER issued this 6th day of May, 2008.

James A. Densley, 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, Robert Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **May 16, 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 **May 20, 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: Paul Lichter
Department of Public Works: Norm Stone

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.

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 May 6, 2009.

- 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)
