

DECISION OF THE SNOHOMISH COUNTY HEARING EXAMINER PRO TEMPORE

DATE OF DECISION: September 19, 2008

PROJECT NAME: **MCNEAL SHORT PLAT**

APPLICANT/OWNER: Travis McNeal, PLG Homes LLC

FILE NO: 07-107588-000-00-LU

TYPE OF REQUEST: **REZONE AND SHORT SUBDIVISION**

DECISION: **APPROVE** Rezone and Short Plat with conditions

BASIC INFORMATION

PROJECT LOCATION: 13102 30th Avenue SE, Everett. Northwest of the intersection of 132nd Street SE (SR96) and 30th Avenue SE in Sec. 29, T28N, R5E, W.M.

ACREAGE: .76

NUMBER OF LOTS: 3

AVERAGE LOT SIZE: 9,520 square feet

SMALLEST LOT SIZE: 6,495 square feet

CURRENT ZONING: R-8,400

PROPOSED ZONING: R-7,200

DENSITY: 6.49 du/ac – gross; 7.69 du/ac – net

COMPREHENSIVE PLAN
General Policy Plan: Urban Low Density Residential

SCHOOL DISTRICT: Everett School District No. 2

UTILITIES
Water and Sewer: Silver Lake Water and Sewer District

FIRE DISTRICT: #1

PDS
RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on August 27, 2007. The application was determined to be complete for regulatory purposes as of the date of submittal. Resubmittals were made on March 7, 2008 and June 11, 2008.

The proposal is being processed concurrently with two adjacent rezone and short plat proposals – the Norman Gregory Short Plat and the Gary Purvis Short Plat.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by County Code.

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 8, 2008. No appeal was filed.

The Examiner held an open record hearing of August 28, 2008. The hearing was combined with the hearing on the two adjacent rezones and short plats. Witnesses were sworn, testimony was presented, and exhibits were entered. The decision here is based on the record made.

PUBLIC HEARING

The public hearing commenced on August 28, 2008, at 10:03 a.m.

1. The applicant was represented by Ken Williams of Insight Engineering
2. PDS was represented by Dorothy Crossman, Planner
3. Testimony was given by Jan O'Neil, Drainage Reviewer, and Norm Stone, Traffic Reviewer. There was no public testimony.

The hearing concluded at 10:21 a.m.

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

FINDINGS OF FACT

1. The master list of exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.

2. The PDS Staff Report has correctly analyzed the nature of the application and the application's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. There have been no public comments indicating concern over the subject rezone and short plat.
4. The applicant is requesting a rezone from R-8,400 to R-7,200 with a concurrent 3-lot short plat of approximately .76 acres for two duplex lots and one single-family lot. The existing residence will remain on Lot 2. The proposal includes the dedication of a new public road extension of 30th Avenue SE.
5. This short plat is one of three adjacent projects being developed together which share a drainage facility and frontage improvements. The two adjacent projects are the Norman Gregory Short Plat (07-107587LU/SP) and the Gary Purvis Short Plat (07-107586 LU/SP). The drainage facility is located on the northern portion of the Norman Gregory Short Plat within a 25-foot drainage easement. Water and sewer for all three projects will be provided by the Silver Lake Water and Sewer District.
6. Because the three short plats propose a new public road to be dedicated to the County, they must be processed as a Type 2 decision by the Hearing Examiner.
7. There are no critical areas on site or within 100 feet of the site boundaries. The site slopes up gently from east to west. The existing vegetation consists primarily of trees, lawn and landscaping.
8. All properties adjacent to this site are zoned R-8,400 and have existing residential development. However, the properties to the south and east have requested to be rezoned to R-7,200.
9. The combined projects propose to develop ten lots in total. The Purvis Short Plat will develop four lots: two new duplex lots, one new single-family residence lot and one duplex lot with an existing residence to remain. The McNeal Short Plat will develop three lots: two new duplex lots and one existing lot with a single-family residence to remain. The Gregory Short Plat will develop three lots: one new duplex lot, one new single-family residential lot, and one existing lot with a duplex to remain.
10. Stormwater runoff will be collected by yard, roof and footing drains and conveyed via a catch basin/conveyance pipe system in the public street to a detention vault in a drainage easement within the Gregory Shot Plat. From the vault, outflow will proceed through a control structure to a water quality storm filter system and then to an off-site catch basin in the Mill Pointe Apartment complex. This system will bypass the Mill Pointe Apartment runoff control system and will outfall into the Mill Pointe level spreader which flows into wetland buffer on the Mill Pointe property. The buffer has the capacity to handle the additional flow from the three new short plats. The Mill Point Apartments has granted permission to share the outfall.

11. The proposed stormwater system will route stormwater away from an area on 130th Avenue SE where drainage problems have been experienced in the past.
12. Grading quantities for the three short plats are anticipated to be approximately 20,000 cubic yards of cut and 20,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Silt fences and straw bales will be used during construction to protect water quality.
13. Staff analysis concluded the following on traffic mitigation and road design:
 - a) The development should pay road system capacity impact fees of \$2,555.19 per lot to the County.
 - b) The development is concurrent as of October 11, 2007.
 - c) Mitigation will not be required with respect to inadequate road conditions.
 - d) State highway impacts can be addressed through payment of \$344.52 per lot to the County.
 - e) Mitigation requirements for impacts on other streets and roads will be established consistent with relevant interlocal agreements.
 - f) For transportation demand management \$75.75 per lot shall be paid to the County.
 - g) The construction of the public road connection to the existing sidewalks on 30th Avenue SE and 132nd Street SE will provide safe walking conditions for school children to their school bus stop.
14. Conditions have been recommended for assessing appropriate impact fees for parks and schools.
15. PDS has determined that the short plat is in compliance with the access and fire hydrant requirements. The location of the fire hydrant has been approved as shown on the preliminary short plat.
16. This development and the two adjoining developments have access to a private road that is proposed to be converted to public road by extending 30th Avenue SE. The necessary right-of-way will be dedicated with the recording of the plat. The public road will be constructed prior to the recording of the plat. A condition will require simultaneous recording of the three adjacent short subdivisions.
17. The subject property is located within an Urban Growth Area (UGA), and is designated by the Comprehensive Plan as Urban Low Density Residential. The proposed R-7,200 zoning is an implementing zone for this designation. The proposed 3-lot short plat resulting in a net density of 7.69 dwelling units per acre implements and is consistent with the Plan's ULDR designation.
18. The Staff Report (pp. 10-14) contains a thorough review of Comprehensive Plan goals and policies that will be carried out by the subject rezone and project.
19. The Examiner concurs with Staff that the rezone and the project are consistent with the Comprehensive Plan. Moreover, the Examiner finds that the proposal bears a substantial relationship to the public health, safety, and welfare.

20. The R-7,200 zone sets a minimum lot size of 7,200 square feet for single-family residences and 10,800 square feet for duplexes. However, lots with less than enough area to meet the minimum may be created in approving a short subdivision when land must be dedicated for county road purposes and such dedication would cause the short subdivision to lose one or more lots due to insufficient square footage. The Examiner approves the application of this provision to Lot 2. Otherwise the project meets zoning code requirements for the proposed new zone.
21. The plat makes “appropriate provisions” for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, potable water supplies, sanitary wastes, recreation, schools, safe walking conditions for students, and other planning features.
22. The public use and interest will be served by the platting of the subdivision.
23. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this proceeding.
2. The requirements of SEPA have been met.
3. Under Chapter 30.42A SCC, the Hearing Examiner may approve a rezone only when all of the following criteria are met:
 - a) The proposal is consistent with the comprehensive plan.
 - b) The proposal bears a substantial relationship to the public health, safety and welfare; and
 - c) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F are met.
4. Based on the findings, the Examiner concludes that the proposal meets the relevant criteria for approval of a rezone. Chapters 30.31A through 30.31F do not apply.
5. The proposal is consistent with the GMA-based Comprehensive Plan, and with the applicable development regulations. RCW 58.17.100. RCW 58.17.195.
6. The proposal provides for items of design and infrastructure as required by RCW 58.17.110. Adequate public services are available to serve the proposal.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The request for approval of a Rezone from R-8,400 to R-7,200 is **GRANTED**.

The request for approval of a 4-lot Preliminary Short Plat is **APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The preliminary short plat received by PDS on June 11, 2008 (Exhibit 2A) shall be the approved short plat configuration. Changes to the approved short plat are governed by SCC 30.41B.310.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. All necessary off-site drainage easements and shared drainage facility easements and shared Operations and Maintenance documents shall be completed, signed, notarized and recorded. Necessary easements and covenants shall include:
 - 1. Offsite construction easement granted from Mill Pointe Apartments to Gregory, Purvis, & McNeal (each) to construct a drainage conveyance pipe to connect to the existing storm drainage catch basin at the northeast corner of the proposed site.
 - 2. Offsite drainage easement granted from Mill Pointe Apartments to Gregory, Purvis, & McNeal (each) to use the existing storm drainage conveyance system to level spreader outfall and that there shall be no deletion or modification of this conveyance/outfall system without the approval and accommodation of alternative outfall for Gregory, Purvis, & McNeal short plats.
 - 3. Shared Operations and Maintenance Cost Agreement between Gregory, Purvis, & McNeal Short Plats for Storm Drainage System serving all three short plats.
 - 4. Drainage easement granted to Purvis & McNeal from Gregory to use, operate, and maintain drainage system facility.
 - 5. Road construction easement granted from the owner of tax parcel 28052900403100 to Gregory, Purvis, & McNeal (each) to construct road to connect 130th Place SE to 30th Ave SE (a private road).
- 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 Everett School District No. 2 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 one existing parcel. Lot 2 shall receive credit."
- ii. "Chapter 30.66B SCC requires traffic impact mitigation payments in the amounts shown below for a single-family residence (or twice the amount for a duplex):
 - 1. \$2,555.19 per lot to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area F. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.
 - 2. \$75.75 per lot for transportation demand management paid to the county,
 - 3. \$344.52 per lot for mitigation of impacts on state highways paid to the County.

These payments are due prior to or at the time of building permit issuance for each single family residence. Notice of these mitigation payment obligations shall be contained in any deeds involving this subdivision or the lots therein. Once a building permit has been issued all mitigation payments shall be deemed paid."

- iii. "The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

D. Prior to recording of the final plat:

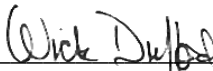
- i. The public road serving the proposed short subdivisions, 07-107586SP, 07-107587SP, and 07-107588SP shall have been constructed and approved by the county pursuant to the Plat Development and Cost-Sharing Agreement (Exhibit 7 A1) submitted to the county on March 3, 2008.
- ii. Short subdivisions, 07-107586SP, 07-107587SP, and 07-107588SP shall be recorded simultaneously.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this 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 short 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 30.41B.300.

Decision issued this 19th day of September, 2008



Wick Dufford, Hearing Examiner Pro Tempore

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 **SEPTEMBER 29, 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 **OCTOBER 3, 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: Dorothy Crossman

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.