

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

DATE OF DECISION: July 30, 2008

PLAT/PROJECT NAME: **OLYMPIC VIEW WATER/SEWER DISTRICT**

APPLICANT/
LANDOWNER: Olympic View Water District
23725 Edmonds Way
Edmonds, WA 98020

FILE NO.: 07-114757-000-00-LU

TYPE OF REQUEST: Major Revision to Conditional Use Permit ZA-8611281 and Landscape Modification

DECISION (SUMMARY): Approved, subject to precondition and conditions

BASIC INFORMATION

LOCATION: The subject property is located at 8128 228th Street SW, Edmonds, WA.

ACREAGE: 1.58 Acres

ZONING: R-8400

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Medium Density Residential

UTILITIES:
Water/Sewer: Olympic View Water District

SCHOOL DISTRICT: Edmonds # 15

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approval subject to conditions

INTRODUCTION

The applicant filed the Master Application on December 12, 2007. (Exhibit 1A)

The Department of Planning and Development Services (PDS) and the applicant gave proper public notice of the open record hearing as required by the county code. (Exhibits 6A Mailing, 6B Publication, and 6C Posting)

A SEPA determination of Mitigated Determination of Nonsignificance was made on April 24, 2008. (Exhibit 5B) No appeal was filed. An addendum to the MDNS was prepared on July 16, 2008. (Exhibit 22) This changes the traffic impact fee amount and satisfies the precondition requested by PDS relating to traffic mitigation fees.

The Examiner held an open record hearing on July 17, 2008, the 81st 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 July 17, 2008 at 1:06 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular requests involved.
2. Ed Caine, Planner for Snohomish County PDS appeared and testified under oath. He presented the county staff report and answered questions from the Hearing Examiner.
3. Camie Anderson, agent for the applicant Olympic View Water District, appeared and testified under oath. She presented the application and answered questions from the Hearing Examiner. Also appearing and testifying under oath for the applicant was Roger Eberhart, the general manager for Olympic View Water District.
4. Wendy Coopey, a neighbor to the proposed project, appeared and testified under oath with her concerns about the conditions to be imposed upon the request.
5. The Examiner kept the record open for one week for submission of additional written materials and for an additional week for the applicant to respond in writing to any such additional materials. The materials received during the open record period were made exhibits and are part of the master List of Exhibits.

The hearing concluded at 2:05 p.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 of 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. **PUBLIC COMMENT:** Three letters were received regarding concerns with the request. In addition, one of the letter writers appeared and testified at the open record hearing regarding the request. Most of the concerns were not in opposition to the construction and operation of the administrative building as such, rather opposition to other activities on the site.
 - A. There is a concern that there will be stockpiles of dirt and construction materials for day-to-day operations of the water and sewer district. The conditions contained below in this decision will address the stockpiling of materials except during construction or maintenance activities.
 - B. Another concern was use of the site to decant wet waste soil from excavations conducted by the district. The applicant testified that no future decant operations will take place. Such prohibition of the decanting of waste soil will be addressed as a condition of this decision.
 - C. Another concern dealt with the number of parking spaces for the public and garage spaces for small trucks and vans operated by the district. Testimony showed that there will be adequate covered parking for the district's small trucks and vans and open air parking for office staff and visitors.
 - D. Concerns were raised about the location of the entrance to the parcel from the county road. The location of the entrance is based upon sight distances for motorists on 228th Street and those entering and leaving the site. As the site is located on a hill top, it was deemed by PDS and the County Engineer to be safer to have the entrance where proposed rather than opposite 82nd Avenue West. The 228th Street access is also deemed an access which will be less disruptive to the residential neighborhood than using the small 81st Avenue road since there will be less traffic on the smaller side streets.
 - E. Concerns were raised by commentators about the storage of heavy equipment on the site. This site will be an administrative office. During construction and maintenance periods and during emergency conditions there may be such vehicles on the site. However, the applicant testified that the large trucks and equipment used by the applicant are kept at the yard in Edmonds. A condition is included in this decision which specifies when such equipment may be on site and when it is prohibited.
 - F. Another concern was the preservation of as many laurel bushes as possible. The applicant pointed out that the bushes are between two parcels owned by the applicant. One parcel contains a water tower and the other is where the office building will be

constructed. The commentator pointed out the bushes also helped screen the view from her home of the site. A condition is included concerning the retention and additional plantings as part of the landscaping plan.

- G. One commentator felt that the project would be an industrial/commercial use in a residential neighborhood. He asked that his abutting property be rezoned to allow a duplex. Such a request is beyond the authority of the Examiner in this matter.
- H. There was been much discussion in written form and testimony at the public hearing whether the applicant has violated the terms of its prior conditional use permit in the past by parking large vehicles, decanting water soaked soils, storing materials, and conducting training on the site. There have been no prior specific findings reached by the courts, PDS or Hearing Examiner whether such activity was a violation. However, the Examiner expects that the applicant shall comply fully with the conditions of this decision, not overburden the conditions or be an unwelcome activity in the neighborhood. The conditions set out below are to be followed strictly to preserve the quiet and clean residential neighborhood nature of the site. No unauthorized deviations will be tolerated.

- 3. **NATURE OF REQUEST:** The applicant proposes a Major Revision to Conditional Use Permit (CUP) ZA 8611281 for a new office and water treatment plant. There are currently no existing buildings located on the site. The original CUP was approved for an office, and a second was approved in 1989 (ZA 8902042) for a water treatment plant. Neither was ever built on that site, and the current proposal is larger than what was previously approved. The applicant's intent for this Major Revision request is to revise the ZA 8611281 CUP to include a building that is larger than was authorized and to include both administrative facilities and water treatment facilities in that building. A landscape modification is also requested for the northern portion of the west property line, a reduction from the required 20 feet of landscaping to a width of 10 feet of landscaping, in order to accommodate a gravel maintenance access route to connect to the adjacent parcel, which is owned by the Olympic View Water District.
- 4. **SITE DESCRIPTION:** The site is undeveloped. Vegetation is primarily grasses, with a few trees. There is a laurel hedge that runs along the west side of the parcel between the subject parcel and the parcel containing the water tower. The land is flat. However, it is located on the top of a hill. There are no critical areas on site.
- 5. **ADJACENT ZONING/USES:** Adjacent zoning is R-8400. The General Policy Plan Future Land Use Map designation is Urban Low Density Residential. All but one of the adjacent parcels is single-family residential developments. The parcel to the northwest is an existing water reservoir for Olympic View Water and Sewer District.
- 6. **IMPACT FEES:** The request will not generate impacts to the park or school systems.
- 7. **TRAFFIC:** The Department of Public Works (DPW) reviewed the request with regard to traffic mitigation and road design standards. This 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 that review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. As found above, the driveway is offset from the public road (82nd Avenue West) opposite on 228th Street SW, so it would need a deviation request for approval of the design. DPW has authorized a deviation from EDDS

(Exhibit 7B) as a means of providing proper sight distances to the site which is located at the crest of the hill.

8. **GRADING AND DRAINAGE:** 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.
9. **CRITICAL AREAS:** Since there are no critical areas within 100-feet of any proposed development, this project is not subject to the requirements of Chapter 30.62 SCC.
10. **ZONING:** The proposed water treatment facility and administrative building is designated as Utility Facilities – All Other Structures in the 30.22.110 SCC Urban Zone Categories- Use Matrix, which requires a CUP for placement in a R-8400 zone. A CUP may be granted in this type of zone if the requirements for a CUP are met.
11. **CUP STANDARDS:** The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.

A review of these CUP standards indicates that the standards are met and no adverse affects will be made to the area as a result of allowing the proposed water treatment facility and administrative building. The proposed activities will have negligible, if any, detrimental impacts to adjacent properties. The proposed activities, in conjunction with the landscape requirements (Exhibit 2D) will be compatible with the existing and intended character, appearance, and quality of surrounding properties. The structure will be larger than found on adjacent properties, but the building will be partially screened by the landscape requirements. The placement of the building has been situated to minimize the appearance of the building. The decision criteria of SCC 30.42.100(1) have been met.

12. **GMA COMPLIANCE:** The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes. The subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay. According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. The proposal is for a water treatment facility and administrative building, which is addressed in the Capital Facilities and the Utilities chapters of the GPP. There are no specific objectives and goals for implementation of the requirements, other than the various coordination and implementation requirements. In this case, the Olympic View Water and Sewer District is required to develop a 6-year Capital Facilities Plan, and to submit the plan to the county for review and approval. The District has done this. The proposed water treatment facility and administrative building are a part of the approved plan. Although a water treatment facility is essential to the public health, safety, and welfare, the facility is not one of the listed "less desirable" essential public facilities. No special accommodation is required for the proposed potable water treatment facility and administration building because the potential negative impacts to adjacent properties is negligible.

13. **LANDSCAPING:** A minimum of a 20-foot Type A perimeter landscaping is required for any development that is permitted as a conditional use (SCC 30.25.020(2)). SCC 30.25.040 allows landscape modifications. The applicant applied for a landscape modification (Exhibit 7A) on December 12, 2007 as a part of the application for the Major Revision to the CUP. The reduction of the landscaping to the north is to allow construction of the relocated access to 228th Street.

SCC 30.25.040(2) stipulates that the decision maker may approve a request for modification when:

- a) The proposed landscaping represents an equal or better result than would be achieved by strictly following the requirements of the code; or
- b) The proposed landscaping fulfills its intended purpose as described in this chapter or, when applicable, Chapter 30.42B SCC.

SCC 30.42B is not applicable to this application.

20 foot Type A Perimeter Landscaping. Type A landscaping requires planting of a mixture of evergreen and deciduous trees at 25 feet on center in a triangular pattern, evergreen and deciduous shrubs at 3 feet on center in a triangular pattern, and evergreen groundcover at 12 inches on center in a triangular or offset pattern (SCC 30.25.017(1)). The intent of this section is to "... significantly separate residential uses and zones from nonresidential uses and zones, and to buffer single family development from multifamily development."

Neither of these conditions applies to the location for which the landscape modification is being sought. The proposed development abuts to a parcel that is owned by Olympic View Water and Sewer District and that is currently developed as a water reservoir. The landscape modification is to reduce the width of the landscaping buffer only for the border between the parcel containing the water reservoir and the subject property. In other words, the landscape modification would reduce the buffer between two components of Olympic View Water and Sewer District. PDS recommended approval of the landscape modification, with the recommendation that Condition E.i. be implemented. The applicant, by letter to the Examiner dated July 28, 2008, has agreed to retain to the extent possible the laurel hedge to the south of the access gate to the tank site. With this additional condition the landscaping will also provide the off-set screening for the Coopey residence which is on the south side.

14. **VACATION OF CONDITIONAL USE PERMIT ZA 8902042:** The mechanism for vacation of a CUP is found in 30.42C.208 SCC. The activity authorized under ZA 8902042, construction of the water treatment facility, does not exist and is not being pursued as a stand alone activity. The water treatment facility is proposed to be included in the structure that was authorized under ZA 8611281 and the water treatment facility is a part of the current project under review. The terms and conditions of the ZA 8902042 CUP were never initiated nor has there been a prior finding by the court, the Hearing Examiner or PDS of a violation of the terms. The landowner is the applicant for the Major Revision application that is before the Hearing Examiner. The requirements for vacation of CUP ZA 8902042 have been met.

The applicant provided a written request for vacation of CUP ZA 8902042 in paragraph 4, page 1, of the Project Narrative (Exhibit 1B). As described above, the conditions of SCC 30.42C.208 has been met. A land use permit binder will be used to implement the requirement for filing the notice of land use permit vacation with the County Auditor. The requirements of SCC 30.72.140 have been met.

15. Any Finding of Fact in this decision which should be deemed a Conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction to hear this matter and render this decision.
2. The DPW recommends that the request be approved as to traffic use subject to specific conditions. PDS recommends approval of the proposal.
3. The request is consistent with the GMACP, GMA-based County codes, and the type and character of land use permitted on the site, the permitted density and the applicable design and development standards.
4. The request for a Major Revision to CUP ZA 8611281 for a new office and water treatment plant, subject to conditions, is appropriate.
5. Adequate public services exist to serve the proposal.
6. If approved with the recommended precondition and conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
7. 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:

Conditional Use Permit ZA 8902042 is hereby **VACATED**.

The request for a Major Revision to Conditional Use Permit ZA 8611281 for a new office and water treatment plant is hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

PRECONDITION

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 site plan received by PDS on May 15, 2008, (Exhibit 2A) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.
- 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.
- C. Prior to issuance of Building Permits:
- i. 10 feet of right-of-way shall have been deeded as right-of-way along the property's frontage with 228th Street SW, to total 40 feet from the centerline of the right-of-way.
 - ii. The applicant shall have paid a road impact fee to Snohomish County for traffic impacts to Transportation Service Area "F" in the amount of \$14,721.56
 - iii. The applicant shall have paid \$791.25 for Transportation Demand Management to the County for TSA F.
- D. Prior to occupancy of any building:
- i. Urban standard frontage improvements conforming to EDDS shall be constructed along the property's frontage with 228th Street SW.
- E. In conformity with applicable standards and timing requirements:
- i. The landscape plan (Exhibit 2D) shall be implemented, provided however that the applicant shall take all reasonable steps to maintain in healthy condition the laurel hedge to the south of the access to the site containing the water tower.
- F. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- G. All overnight storage of vehicles shall be inside the garage, except during construction, maintenance, service and repair activities of permitted facilities on the site. In the event of an emergency and vehicles need to be stored outside on the site, the applicant shall obtain an administrative permit as authorized by SCC 30.22.050 - Temporary emergency use or structure.
- H. Large vehicles (greater than 5 ton GVW) shall only be parked or stored on the site during construction, maintenance, service and repair activities of permitted facilities on the site. In the event of an emergency and large vehicles need to be stored on the site, the applicant shall obtain an administrative permit as authorized by SCC 30.22.050 - Temporary emergency use or structure.
- I. No materials, equipment, or imported soils shall be stored outside any structure except during construction maintenance, service and repair activities of permitted facilities on the site. In the event of an emergency and such items need to be stored on the site, the applicant shall obtain an administrative permit as authorized by SCC 30.22.050 - Temporary emergency use or structure.
- J. There shall be no vector or soil decant stations on the site.
- K. A Land Use Permit Binder, (enclosed with the applicant's copy of this decision), shall be recorded prior to construction permitting. The Applicant shall file a Land Use Permit Binder on a form provided by PDS with the County Auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the County, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Binder shall serve both as acknowledgement of and agreement to abide by the terms and

conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

L. THE FOLLOWING CONDITIONS OF PERMIT ZA 8611281 AS ISSUED APRIL 29, 1987 ARE HEREBY DELETED:

- C.iii. *(Ten feet of right-of-way along the properties frontage on 228th Street Southwest shall have been deeded to and accepted by Snohomish County.)*
- F. *(Type II landscaping shall be established and maintained along the east south and west property lines inside the security fence.)*
- G. *(Type III landscaping shall be established around and between the office building and 228th Street Southwest.)*

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.

Decision issued this 30th day of July, 2008.

James 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, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **AUGUST 11, 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 **AUGUST 13, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

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 July 30, 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)

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.