

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 30, 2009

PLAT/PROJECT NAME: **OUTLOOK VISTA**

APPLICANT/
LANDOWNER: Cambria Homes, Inc.

FILE NO.: 09-101171-000-00-SD

ORIGINAL
FILE NO: 04-111961-000-00-SD

TYPE OF REQUEST: Major Revision to revise the Hearing Examiner's condition requiring dedication of a road across Seattle City Light property and replacing said dedication with an easement

DECISION (SUMMARY): **APPROVED**

PDS STAFF RECOMMENDATION: Approve revision

I. INTRODUCTION

The applicant filed the application for a revision on March 3, 2009. (Exhibit A1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit C1 (Affidavit of Mailing); Exhibit C2 (Affidavit of Notification by Publication); Exhibit C3 (Posting Verification).

The Examiner held an open record hearing on April 29, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

The Examiner has read and considered all the exhibits in the file and entered them as part of the record in this matter.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

II. BACKGROUND INFORMATION

1. Major Revision Request

The applicant's request is for a major revision to a Hearing Examiner's condition to the approved preliminary plat of Outlook Vista (formerly known as Cambria Seattle Hill), PFN: 04-111961-000-00-SD. The scope of the request is limited to the modification of Condition C.ii., which requires as a restriction on the face of the final plat:

A certificate of dedication, to be signed by the Seattle City Council, dedicating the 124th Street SE right-of-way to the use of the public for public road purposes.

The applicant requests that the condition be modified to require the portion of the new roadway (124th Street SE) that crosses the Seattle City Light right-of-way, not be dedicated to the County by the recording of the final plat, but instead be established as an easement.

No changes to conditions regarding lot layout or lot yield, stormwater drainage, fire flow, mitigation payments, or critical areas are requested.

2. Project Chronology

The original preliminary plat was conditionally approved by the Deputy Hearing Examiner on September 14, 2005 after an open record hearing which took place on August 30, 2005 (Exhibit A3). The decision was not appealed or petitioned for reconsideration. Two subsequent minor revisions were submitted and administratively approved. The first revision separated the building lots into two phases for recording and was approved July 3, 2007 (Exhibit A1). The second revision modified some of the lot lines and was approved November 25, 2008 (Exhibit A2). No change in the lot yield occurred with either minor revision.

Site construction has been completed. The grading permit was issued August 9, 2007. Final inspection was completed on January 8, 2009.

The final plat application for the first phase was submitted on July 3, 2008. The final plat review has been largely completed. Scheduling of the closed record hearing before the County Council is contingent upon the approval of this major revision.

This application for a major revision to the conditionally approved preliminary plat was submitted to PDS on March 3, 2009, and was determined on that date to be complete. A resubmittal of the application was received on April 13, 2009. As of the hearing date, 29 days of the 120-day review period will have elapsed.

3. Site Description

The subject site is 12.81 acres and consists of two parcels separated by power transmission lines. North of 124th Street SE, the transmission lines are located within an easement on the west half of the northeast parcel. South of 124th Street SE, the transmission lines are located within a public right-of-way owned by Seattle City Light. The southwest parcel lies west of the right-of-way and is accessed from the east across the right-of-way on 124th Street SE. 124th Street SE, as constructed, lies wholly within the Seattle City Light right-of-way.

III. ISSUES OF CONCERN

No public comment letters were received by PDS during the comment period. There was public testimony received at the open record hearing raising concerns about traffic resulting from opening connections within the new subdivision that will result in “cut-through” traffic. The PDS staff representative, Senior Planner Paul MacCready, explained that those concerns were discussed and considered by the former Deputy Hearing Examiner during the original proceedings. Mr. MacCready indicated that the plat was designed to create a number of turns through the plat so that there was not a direct route, making it less desirable as a “cut-through” route. He also explained the procedure for petitioning the Department of Public Works (DPW) for traffic calming measures.

IV. ANALYSIS OF ISSUE BROUGHT FORWARD BY REVISION APPLICATION

The original preliminary plat decision contained a condition of approval imposed by the Deputy Hearing Examiner that required a certificate of dedication, signed by the Seattle City Council that would dedicate the 124th Street SE right-of-way to Snohomish County for public road purposes. Even though during the original review, Seattle City Light asked the right-of-way to be dedicated to the County (Exhibit D1), the agency later objected and insisted that the portion of the road that crosses Seattle City Light right-of-way be recorded as an easement instead (Exhibit D4).

Neither PDS nor DPW objects to this change (Exhibit D5), but since the requirement was imposed by a Hearing Examiner’s condition, it can only be revised by the Hearing Examiner. A revised condition has been recommended by PDS, which reads as follows:

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

ii. ~~“A certificate of dedication, to be signed by the Seattle City Council, dedicating the 124th Street SE right-of-way to the use of the public for public road purposes.”~~

To be replaced by:

“A perpetual easement for public road purposes shall be granted by Seattle City Light across property described in Attachment A of Exhibit D5. Snohomish County shall have the right at all times to enter the easement area for the purposes of maintenance and repair as deemed necessary by the County.”

Exhibit E (Staff Recommendation). At the hearing, Mr. MacCready informed the Hearing Examiner that the County Engineer, and Mark Brown, the PDS Traffic Analyst in this case, had agreed to this language. He also stated that Seattle City Light had been given the opportunity to review the language and had some objection to the word “perpetual”, but hadn’t articulated the basis of the objection. The Examiner notes that Seattle City Light is a party of record and had notice of the open record hearing and could have sent an objection in writing or appeared in person, but did not. Given these circumstances, it is reasonable to approve the language as recommended by PDS.

V. CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the application for a major revision to the Outlook Vista subdivision application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

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

RCW 58.17.110.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the preliminary subdivision application should be approved.
4. The former Deputy Hearing Examiner has already determined that adequate public services exist to serve this proposal and that if approved with the conditions set out in his decision of September 14, 2005, the proposal will make adequate provisions for the public health, safety, and general welfare.
5. The Hearing Examiner concludes as a matter of law that Condition C.ii should be replaced as follows in the original decision:
 - C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- ii. ~~“A certificate of dedication, to be signed by the Seattle City Council, dedicating the 124th Street SE right-of-way to the use of the public for public road purposes.”~~

To be replaced by:

“A perpetual easement for public road purposes shall be granted by Seattle City Light across property described in Attachment A of Exhibit D5. Snohomish County shall have the right at all times to enter the easement area for the purposes of maintenance and repair as deemed necessary by the County.”

- 6. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Condition C.ii. in Case No. 04-111961-000-00-SD, *In the Matter of the Application of Cambria Homes, Inc. (Cambria Seattle Hill) (September 14, 2005)* is replaced to read as follows:

- C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- ii. ~~“A certificate of dedication, to be signed by the Seattle City Council, dedicating the 124th Street SE right-of-way to the use of the public for public road purposes.”~~

To be replaced by:

“A perpetual easement for public road purposes shall be granted by Seattle City Light across property described in Attachment A of Exhibit D5. Snohomish County shall have the right at all times to enter the easement area for the purposes of maintenance and repair as deemed necessary by the County.”

A revised decision shall be issued reflecting the revised condition.

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 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 30.41A.300.

Decision issued this 30th day of April, 2009.

Barbara Dykes, 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 **MAY 11, 2009**. 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 14, 2009** 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 MacCready

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.