

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 9, 2006

PLAT/PROJECT NAME: *BROOKHAVEN*

APPLICANT/
LANDOWNER: J.M. Murphy, Inc.

FILE NO.: 04 117852

TYPE OF REQUEST: 113-lot preliminary plat utilizing lot size averaging and rezone from Residential-9600 (R-9600) to Residential-7200 (R-7200) with three concurrent boundary line adjustments and approval of a private road

DECISION (SUMMARY): The requests are APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located between Damson Road and South Danvers Road, southeast of the intersection of 198th Place SE and Damson Road, in Lynnwood, Washington

ACREAGE: 22.56

DENSITY: 5.0 du/ac (gross)
7.37 du/ac (net)

NUMBER OF LOTS: 113

AVERAGE LOT SIZE: 5,897 square feet

MINIMUM LOT SIZE: 3,886 square feet

OPEN SPACE: 152,447 square feet/15.3%

ZONING: CURRENT: R-9600
PROPOSED: R-7200

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)
Subarea Plan: Southwest
Subarea Plan Designation: Residential Estate (1-2 du/ac)

UTILITIES:

Water: Alderwood Water and Wastewater District
Sewage: Alderwood Water and Wastewater District

SCHOOL DISTRICT: Edmonds

FIRE DISTRICT: No. 1

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: Approve subject to conditions

INTRODUCTION

The applicant filed the Master Application on March 16, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 26, 2006 in the morning.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 16, 17 & 18)

A SEPA determination was made on December 16, 2005. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on February 23, 2006, the 181st 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 February 23, 2006 at 1:00 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 request involved.
2. Mr. Jim Egge, represented the applicant, and indicated that the matter was originally was to be set for hearing, but was continued to allow for advertising on a private road. He stated that it will be developed in four divisions and he had no objection to the conditions, except for Condition D.iii. on page 11 of the PDS staff report and wanted to be sure that it would for alternative options if needed.
3. Ms. Mona Davis, PDS and Mr. Andy Smith, on behalf of DPW appeared.
4. No one appeared in opposition to the request.

The hearing concluded at 1:16 p.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

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. The PDS staff report 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 Protection Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. No letters of concern were submitted, nor did anyone appear in opposition.
4. The request is for a rezone from R-9600 to R-7200, with a concurrent 113-lot single-family residential subdivision to be built on 22.5 acres in four phases of development utilizing lot size averaging provisions. Access to the lots is off Danvers Road and Damson Road and there will be three boundary line adjustments, an approval of a private road within the plat.
5. The site is currently developed with 22 residential structures of which 12 are proposed to be demolished.
6. The surrounding properties are to the north, west and south and are currently zoned R-9600. Some properties to the southwest are zoned R-7200. They all consist of residential development, with Interstate 405 lying directly to the east.
7. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home.
8. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B 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 this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions. (See Pages 3-6, Exhibit 30)
9. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
10. There is a Category 3 wetland and Type 4 stream lying near the center of the parcels. PDS has reviewed the Critical Areas Study and has determined that the project complies with the Critical Area Regulations of Chapter 30.62 SCC.
11. Four detention vaults are proposed to meet the detention requirements with all water quality measures proposed to be downstream of the detention facilities. 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 (Title 24 SCC).
12. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished and with the understanding that the existing onsite sewage systems will be abandoned

in accordance with Health District regulations. It is recommended that any on-site detention facilities be abandoned.

13. Public water and sewer service will be available for this development as well as electrical power.
14. The property is designated Urban Low Density Residential (ULDR 4-6 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the ULDR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. Land in this category may be developed at a density of 4-6 du/ac and one of the implementing zones is the R-7,200 zone which is the case here.
15. The request complies with the Snohomish County Subdivision Code, Chapter 30.41A SCC (Title 19 SCC) as well as the State Subdivision Code, RCW 58.17. The proposed plat 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.
16. 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.
17. The proposal has been evaluated by PDS for compliance with the lot size averaging provisions of SCC 30.41A.240 and SCC 30.23.210. This proposal is consistent with these provisions.
18. 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.
19. The aerial photograph (Exhibit 11) very clearly and effectively shows the location of the proposal and how it would fit into the surrounding area.
20. The request for the three boundary line adjustments should be approved as submitted.
21. The request for a private road within this subdivision is recommended for approval.
22. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS:

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 effect upon 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, with the exception of the alternatives added to Condition D.iii.
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 GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and since no evidence was submitted contrary to the requirements of Chapter 30.42A, the evidence is presumed to meet these requirements.
5. The requests for the approval of the plat will allow for development of single-family homes in this rapidly growing area of the county, which is consistent with what is taking place in that area now.
6. The requests for the approval of the three boundary line adjustments to allow development of the plat as well for the private road within the plat are reasonable and should be allowed.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The preliminary plat received by PDS on February 15, 2006 (Exhibit 13) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- 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. The platlor 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.
- 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 Edmonds School District No. 15 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 14 existing parcels. Lots 1 through 6, 25, 27, 28, 49, 92, 93, 99, and 100 shall receive credit.”
 - ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

\$1,655.77 per lot for mitigation of impacts on county roads paid to the County,
 \$305.68 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 payments shall be contained in any deeds involving this subdivision of the lot(s) therein. Once building permits have been issued, all mitigation payments shall be deemed paid by PDS.
 - iii. 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."

- iv. 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. Urban frontage improvements shall be constructed along the parcel's frontage on Damson Road and Danvers Road to the specifications of the DPW.
- ii. The features on the approved TDM plan shall be constructed/installed.
- iii. Pedestrian facilities shall be constructed to the specifications of the DPW along Damson Road and along Danvers Road to meet the needs of the students for walking conditions as identified in comments from the Edmonds School District [RCW 58.17.110]. Alternative options may be allowed or approved by the Department of Public Works.
- iv. Native Growth Protection Area (NGPA) boundaries 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.

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

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.

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.

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

DECISION:

The requests for a REZONE from Residential-9600 to Residential-7200, along with PRELIMINARY PLAT approval of a 113-lot preliminary plat with a private road and with three concurrent BOUNDARY LINE ADJUSTMENTS are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 10th day of March, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 20, 2006**. 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner's decision which could not reasonably have been produced at the Examiner's hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **March 24, 2006** 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Mona Davis
Department of Public Works: Andrew Smith

<p>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.</p>
